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(Defence campaign against Law Society of Upper Canada continues into 21st century)

Lawyer takes Establishment as his windmill

By VIANNEY CARRIERE

"I sense that there are people me." Harry Kopyto, lawyer.

He tilts at his own personal windmills: the solid structures on society's landscape, perceived corporate villains, the Royal Canadian Mounted Police, the Attorney-General of Ontario, the Establishment.

"Harry Kopyto," Harry Kopyto says, "does not sue persons, unless they are very wealthy and establishment people. I sue major corpora-

tions and I sue the government. I sue the police."

He does so relentlessly, often with calculated abrasiveness, always with every ounce of energy in his short, stodgy 35-year-old frame. Every single lawsuit, to him, is legal Armageddon with the outcome crucial to the survival of human freedoms.

To watch Harry Kopyto do battle in court is to observe the ideologic Marxist, self-styled

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Victory for Kopyto is tilting a suit

From Page One

okesman for the downtrodden, versus the Establishment as champion of the status quo. When the two try to address each other, it is a study in absolute failure to communicate.

He has a rare concept of victory in a profession where most lawyers see the win as everything. Mr. Kopyto's wins have little to do with how his cases are ultimately decided in the courtroom.

"Just to launch a suit is a victory for me," he says, "because it gets information out and gives voice to the political struggle."

He calls the enemy "the System" or "the Establishment," but in his mind, it is a foe befogged in vagueness and ambiguity. He cannot see it, but he feels it.

"I sense the presence of an elite," he says. "I can't put a name to it, I can't put a face to it, but I feel it's there, making it impossible for my cases to be dealt with in a way that the social consequences are not obliterated."

He stands alone.

No friends in profession

He has no friends in the legal profession, whose membership he describes as "self-important, egotistical, egomaniacal in some cases, materialistic . . . They think they are God's gift to the world, they have overblown evaluations of themselves, they are more concerned with how much money they can make than with serving their clients

Another lawyer says of Mr. Kopyto: "If you're Harry Kopyto and you walk into court, your case will get called last. If you're Harry Kopyto, you don't get the really good cases because you're not one of the guys who pass the good cases to each other. If you're Harry Kopyto, everything works against you."

A moment's reflection, and the same lawyer adds, "Look: I speak on civil liberties and so do others. But your freedom and mine ultimately depends more on Harry Kopyto for all his lack of judgment and occasional stupidities than on anyone else. Because no one tells him what to do."

Mr. Kopyto has no illusions about where he stands in the pecking order of Ontario's legal establishment.

"The people I represent," he says, "wouldn't be represented by anyone else. I'm the last person they come to. I am the dead end. After me there is nothing. Oblivion. I am the last hope. I should actually be an honorary member of the Establishment for sowing illusions that the legal system can be responsive to people's needs."

In a different mood, on a different day, Mr. Kopyto offers another appraisal of himself: "I hate to say this, and it bothers me, and it depresses me, but I happen to be the most consistent political lawyer fighting for the rights of the people. The profession of law is disappearing. Where are the fighters? Where are the Clarence Darrows?"

"If there were two dozen like me, the system would probably break down. The judges would go crazy. Rich people would have sleepless nights

He sees himself, unabashedly, as a misfit aggressor in an arena made tranquil by unwritten rules of conduct that prescribe gentlemanly behavior and belie the theory of the adversarial system in which lawyers are supposed to single-mindedly move heaven and earth for the people they represent.

"I also believe in justice. Passionately. That's another thing that demarks me."

Product of environment

What Mr. Kopyto is, he is fond of saying, is a product of his environment.

He was born in 1946, the son of Polish Jews, in a displaced persons' camp in West Germany. Every member of his family, except a brother and his parents, was killed during the Second World War, he says. He lived in Israel from 1948 to 1952 when his parents came to Canada.

"Because I was culturally cross-pollinated," he says, "I can see things others have been trained not to see."

Though he did not live through it, Mr. Kopyto says, "the Holocaust was the key experience of my life."

"I asked myself from very early on why I was spared. I came to the conclusion I was spared in

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order to give whatever abilities I have to ensure we never again have a situation where we have systematic racism, oppression and dictatorship, where we have people with influence and wealth telling weak and impoverished people what to do and how to behave."

It is a struggle that began early for Harry Kopyto. In early high school, he fought for the abolition of compulsory cadet training and led the opposition to higher milk prices.

"I was always a trouble-maker. I'm hopeless."

In university, he was active in the ban-the-bomb movement and later in the anti-Vietnam war movement.

In the early 1970s, he was a member of the League for Socialist Action, from which he later acquired one of his most persistent clients and he was active in the Waffle wing of the New Democratic Party.

"I have always been political," he says. "I am now an active member of the left wing of the NDP."

"Some people have described me as a Marxist, which I own up to."

He leans over a table in his 15th-floor office in the Thomson Building at Queen and Bay streets and

(...)

ently. "I don't have a calling card. These are my cards."

He leafs through the file and intones: "1975. John Damien versus the Ontario Racing Commission. The first homosexual to use the courts to seek justice. It began a revolutionary change in people's consciousness and Damien became an inspiration for thousands to go public."

Seven years later, the suit is still before the courts.

"The significance of that suit," Mr. Kopyto says, reiterating his belief in using courts for political causes, "is not whether it is won or lost, but that it even took place."

It also set the trend for the type of cases Mr. Kopyto was to concentrate on in his legal career.

A Jew, he represented the Canadian Arab Federation in a libel action against The Globe and Mail. "The significant fact is that I was even hired. The Jewish community went wild."

He launched a series of actions that sought to establish the principle that a person is entitled to see the information on which a search warrant that affects him is based.

He has fought cases that affect women's rights, prisoners' rights, the rights of the aged and the handicapped and unions' rights.

For five years he has represented Ross Dowson, former chairman of the League for Socialist Action, in a series of unsuccessful suits against the RCMP. The suits allege Mr. Dowson was defamed in an RCMP report that implied he advocated social change through violent means.

Mr. Kopyto has lost that case all along the way and he now wants to bring the matter before the Human Rights Committee of the United Nations.

In a reference to Attorney-General Roy McMurtry's ministry, he says, "There's no question that a lot of people believe they are out to get me. I feel what those people are telling me, must to an extent be right."

Etched in Mr. Kopyto's mind is the length to which the Attorney-General went to restore a 1980 contempt-of-court citation against him. The lawyer was found in contempt by a County Court judge for failing to appear in court on Chanukah. The finding was overturned by the Ontario Court of Appeal and Mr. McMurtry's department fought the case — unsuccessfully — to the Supreme Court of Canada.

"What they did was incredible," Mr. Kopyto says. "It must have cost them \$100,000 to appeal a \$2 fine. Don't those guys have anything better to do?"

Ask about his family, and he mentions his wife, Sabina, his 3-year-old daughter, Erica, his 7-year-old son, Marc. ("I take great joy in following the Biblical edict to multiply.") Then he drifts away from that, and tells of his pride in his "proletarian origin."

Obsession with chess

Ask about his hobbies and he tells of his obsession with chess and then moves on to discuss articles on law that he is writing. And the books he is reading: Marxism and Psychoanalysis, Primitive Law, The Rise of Capitalism.

In another office, before Mr. Kopyto moved to the Thomson Building, there was a framed quotation on his wall from Eugene Debs, a turn-of-the-century labor leader and five-time Socialist candidate for president of the United States: "Years ago, I recognized my kinship with all living things. I said then, I say now, as long as there is a lower class, I am of it; as long as there is a prison element, I am from it; as long as there is one soul in prison, I am not free."

"I took it down because it was sort of corny,"

Mr. Kopyto says.

But that's my attitude. To law, and to life.

Committee will review court safety

A special committee of lawyers, judges and Government officials will review court security following an Osgoode Hall shooting last week that left two men dead and a third seriously injured.

Lawyer Oscar Fonseca, who had just argued successfully against an injunction being sought to postpone elections at a Toronto Sikh temple, and a man who worked at the temple, were killed.

The committee, under Rendall Dick, deputy attorney-general, will report to Attorney-General Roy McMurtry on security measures for the courts. Mr. McMurtry said he hopes to have an interim report some time next month.

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Globe and Mail, John Wood

Harry Kopyto: "Just to launch a suit is victory for me."

“This decision is a mockery of justice,” he told The Globe and Mail. “It stinks to high hell. It says it is okay to break the law and you are immune so long as someone above you said to do it. . . Mr. Dowson and I have lost our faith in the justice system. We’re wondering what is the point of appealing and continuing this charade of the courts in this country which are warped in favor of protecting the police. The courts and the RCMP are sticking so close together you’d think they were put together with Krazy Glue.”

FROM A STATEMENT BY HARRY KOPYTO UPON HEARING OF A PROVINCIAL COURT DISMISSAL OF A DAMAGE SUIT LAUNCHED AGAINST THE R.C.M.P. ON BEHALF OF TORONTO SOCIALIST ROSS DOWSON - GLOBE & MAIL, DEC. 18, 1985.

FOR THESE WORDS, KOPYTO HAS BEEN DECLARED GUILTY OF CONTEMPT OF COURT. FUNDS FOR HIS DEFENCE ARE PAYABLE TO: ILLER, CAMPBELL & ASSOCIATES, 136 SIMCOE ST., SUITE 201, TORONTO, ONT. M5H 3G4

The ~~following~~ ^{adjoining} article is ~~a collection~~ from the summary address before Judge M. Zuker of the Ontario Provincial Court by Toronto lawyer Harry Kopyto on behalf of Ross Dowson and the Socialist Rights Defence Fund on October 9 1985. Early in the course of the hearing ~~Dowson testified~~ ^{as did} the two ^{top} RCMP officers Yaworski and Chisholm against whom ~~he~~ ^{Dowson} had sworn charges back in April 1980. ^{(admitted to} ~~of~~ among others having committed criminal acts of forgery, uttering, and transmitting false messages for the purpose of disrupting the lawful activities of members of the League for Socialist Action. — LSO

As the facts about the massive assault on civil rights perpetrated ^{with the Commission for actual mandate} public attention ^{were exposed to public attention} by the ~~RCMP~~ ^{RCMP} madnated by Ottawa ^{over a period 1969-1973} ^{this became known} immediately as Case 13 of the infamous "thought control" Operation Checkmate directed with the ultimate target being the against the radical left but ultimately against the mass movements of the Canadian working people, the trade union movement and ~~the~~ its political arm the NDP. After having been blocked at every other level of the Canadian justice system the SRDF efforts to establish the legitimacy and legality of socialist thought in face of charges of "subversion" by the RCMP

Defence of Kopyto

Mar/86

We are lawyers who regularly appear in Courts in Ontario. We oppose the criminal prosecution of Mr. Harry Kopyto by the Attorney General of Ontario for contempt of Court because Mr. Kopyto made the statements which are reproduced below, along with our comments.

1. "This decision is a mockery of justice. It stinks to high hell. It says it is okay to break the law and you are immune so long as someone above you said to do it?"

Comment:

It is our view that in a free and democratic society Mr. Kopyto or anyone else should be free to make such statements. Mr. Kopyto's choice of colourful language should be irrelevant.

In essence, Mr. Kopyto has expressed his view that a particular decision is very unjust, that the decision sanctions law breaking (by the police) and protects those who break the law when their superiors order this law breaking. We believe that Mr. Kopyto (and others) must be allowed to express the view that a court decision is unjust and to express a view as to the significance of that decision. We also believe that his view is not an unreasonable one. But even if it were unreasonable, he must still have the right to express this opinion without having to face a criminal prosecution.

2. "Mr. Dowson and I have lost our faith in the judicial system to render justice".

Comment:

No society, however totalitarian, can through criminal prosecutions prevent its' citizens (lawyers or otherwise) from losing faith in the judicial system. No free society can tolerate criminal prosecutions of those who dare to state publicly that they have lost faith in the judicial system.

3. "We're wondering what is the point of appealing and continuing this charade of the Courts in this country which are warped in favour of protecting the police. The Courts and the RCMP are sticking so close together you'd think they were put together with Krazy Glue."

Comment:

It is our firm belief that citizens of a free society, particularly lawyers, must have not only a right but a duty to alert the public to the type of situation described by Mr. Kopyto in these sentences. The suppression of such statements through criminal contempt prosecutions can only serve to hide from the public and perpetuate a problem of a bias in the Courts, if such a problem exists. It is our considered view that Mr. Kopyto in these latter statements is essentially telling the truth about a real and serious problem which should be the subject of an open and public debate instead of a criminal prosecution.

Finally, it is alleged that Mr. Kopyto's remarks are "calculated to scandalize the Court and to bring the administration of justice into disrepute". This is entirely unlikely. The administration of justice and the Courts that are an important part of it, will survive the expression of strong opinion; Their reputes will rise or fall on a public evaluation of the quality of their work. We consider the language of Mr. Justice Black, speaking for the majority of the Supreme Court of the United States in a similar case, to be applicable to the Canadian situation..

"The assumption that respect for the judiciary can be won by shielding judges from published criticism wrongly appraises the character of American public opinion. For it is a prized American privilege to speak one's mind although not always with perfect good taste, on all public institutions. And an enforced silence, however limited, solely in the name of preserving the dignity of the bench, would probably engender resentment, suspicion and contempt much more than it would enhance respect".

We therefore call on the Attorney General of Ontario to put an end to a prosecution that is inconsistent with the ideals of a democratic society which cherishes freedom of expression.

Harry Kopyto Defence Committee

372 Bay Street, Suite 1708
Toronto, Ontario M5H 2W9 (416) 361-1404

March 12th, 1986



Dear Friend:

You will notice from the Fund Raising Appeal and article enclosed with this letter, Toronto Lawyer, Harry Kopyto, faces criminal charges arising out of his public criticism of the judicial system made in December of last year.

As concerned civil libertarians, we are sure that you will be as alarmed as hundreds of lawyers have been at the precipitous action of Attorney General, Ian Scott, in laying the criminal charge against Mr. Kopyto. However, now that Mr. Kopyto must face his day in court, your financial assistance is urgently needed in order to insure that he has the best legal defence. Thousands of dollars must be raised to assure that freedom of speech and in particular the right to make critical comments of the judicial system is protected.

Our first fund raising activity will be a wine and cheese party to be held at the home of Hetty and Charles Roach at 6 Humewood Drive on April 5th, at 8:00 p.m. We are asking people to contribute \$35.00 to this catered event. In addition, the program will include entertainment which is planned for the evening.

We would ask you to forward your contribution to the Defence Committee office as soon as possible. We will send you your ticket upon receipt of your contribution. If we do not hear from you, we will try to reach you by telephone in the next few days to arrange ticket delivery and pick up your contribution.

Please contact us by telephone if you have any further questions or suggestions. For your information, the list of inviters to the event includes Evelyn Gigantes, Member of the Provincial Parliament; Lynn McDonald, Member of Parliament; Rabbi Reuben Slonim; Bromley Armstrong, Member of the Ontario Labour Relations Board; June Callwood, Author; and Svend Robinson, NDP Justice Critic.

We look forward to seeing you on April 5th, 1986. We are confident that the solidarity of the civil liberties community behind Mr. Kopyto will result in a major victory for freedom of expression in Canada.

Yours in solidarity,

Trudi Tettenborn

Trudi Tettenborn
Harry Kopyto Defence Committee

ing disciplinary action against former Solicitor-General Robert Kaplan for advising security service agents that they could break provincial laws to plant listening devices.

He uncovered an attempt by the Ontario's Attorney-General's office to block an independent investigation into police abuse in the Metropolitan Toronto Police Force.

He tape-recorded Toronto police officers allegedly threatening and intimidating his client, Charles Keeping, in a major expose of police abuse in 1985.

Kopyto has fought cases which have defended or enlarged the rights or interests of women, tenants, the disabled, trade unionists, blacks, gays, anti-war activists and prisoners. His cases include the **Danlen** case (the first gay rights case in Canada), the **McDonald** case, which established that women could not be fired from employment because of their sex, the **Dvorak** case which declared restrictions on a lawyer's right to contact the news media unconstitutional, the **Vancouver Sun** case regarded as the leading freedom of the press case in the past decade, and the **Wilson** case, resulting in the largest rent abatement award to tenants in Canadian history.

He has led and organized delegations and petitions on issues as diverse as the defence of the leaders of **Solidarnosc** in Poland and the defence of Dr. Henry Morgentaler. A previous effort to prosecute Kopyto for contempt by the Ontario and federal governments in 1980 failed despite appeals all the way to the Supreme Court of Canada.

Harry Kopyto's rights and the rights of other lawyers to defend and promote the interests of working people through the judicial system is at stake in this case.

The initial Legal Advisory Committee of the Harry Kopyto Defence Committee is composed of: Charles Campbell, Angie Codina, Paul Copeland, Michele Meakes, Professors Michael Mandel and Harry Glasbeek, Peter Hryn, Robert Kellerman, James Lockyer, Jack Pinkovsky and Charles Roach.

The Harry Kopyto Defence Committee has been formed to:

1. acquaint as many persons as possible with the facts of the legal prosecution that has been launched by the Ontario justice system against him and the cause of justice;
2. to build broad community pressure to get the charges dropped; and
3. to raise the necessary funds to guarantee the most effective defence of his rights as possible.

This committee of volunteers already has the support of leading members of the Law Union of Ontario, the Delos Davis Law Guild, the Canadian Bar Association, the Criminal Lawyers Association, and a growing number of prominent and ordinary persons active in various other sectors and levels of the Canadian community.

We need your financial support to help meet our goal of \$50,000 to defray the legal costs of the defence—actually a modest sum considering that we are required to defend Kopyto in three separate cases against institutions having unlimited access to public funds and which will undoubtedly appeal any and every defeat. We are planning media conferences, rallies, presentations of briefs and petitions. This will require your time and energy to contact others and get such activities underway to ensure that justice is done.

Contact us; we need your help!

- ☐ Add my name as an endorser of the Defence Committee and its aims.
- ☐ Enclosed please find my contribution to assist with the legal defence, payable to the **Harry Kopyto Defence Fund**, c/o Iler, Campbell & Associates, Barristers and Solicitors, 136 Simcoe Street, Ste. 201, Toronto, Ontario M5H 3G4.

Name _____

Address _____

City/Prov. _____

Postal Code _____ Phone _____

THE HARRY KOPYTO DEFENCE COMMITTEE
372 Bay St., Ste. 1708, Toronto, Ont. M5H 2W9

Telephone: (416) 361-5885

Drop the charges! Defend free speech!



Harry Kopyto

Ontario Attorney-General Ian Scott has charged Toronto lawyer Harry Kopyto with criminal contempt of court for a statement in an interview which appeared in the **Globe and Mail** on December 17, 1985. Kopyto was quoted as saying that the courts in this country "are warped in favour of protecting the police."

Within days leading members of the Canadian Bar Association, the Canadian Civil Liberties Association and the Criminal Lawyers Association voiced their opposition and called for the charge to be dropped. Alan Borovoy, general counsel to the Canadian Civil Liberties Association described the charge as an issue of principle and "a misuse of criminal law."

Why has this case aroused so much concern within the legal profession and among widely diverse supporters of human rights and free speech. What is at stake?

Defend free speech!

The idea that a person could face a jail sentence for merely expressing a view critical of perceived biases and injustices in the legal system is abhorrent to a civilized community. As the Law Society's own rules of professional conduct indicate, "a lawyer must have a basic commitment to the concept of equal justice for all within an... impartial system." Without the free exchange of conflicting views and opinions, indeed with the threat of criminal sanctions for the expression of dissident views, the preservation or development of a free and democratic society might well be impossible. The guarantee of freedom of expression and speech contained in Canada's Charter of Rights would have little meaning if a lawyer, for expressing his opinion on an issue of public interest and concern, could be labelled criminal, his integrity compromised and his ability to make a living in a profession of his choice undermined.

A fearless and independent bar is critical to the survival of our judicial system. Lawyers who are afraid to speak out against injustices could do little to uphold or improve the quality of justice in this country.

Drop the charges!

In explaining why the charge was laid Attorney-General Scott said that "a certain tolerance is permitted to members of the public. But members of the Bar who are before the courts all the time have a special standard to meet." We believe that every citizen of this country is entitled to the same rights. No person should be subject to selective prosecution because of their choice of profession or calling. The decision to charge Mr. Kopyto and not his client who expressed identical views at the same press interview presents a discriminatory application of criminal law.

The courts and the RCMP

Mr. Kopyto's statement was made after eight years of litigation against two former RCMP senior officers who finally admitted responsibility for circulating phoney letters within a legitimate labour and socialist group in Toronto in the early 1970s with the aim of destabilizing it and destroying it. The group was targeted by the RCMP with federal cabinet approval for a "dirty tricks" campaign called Operation Checkmate.

A leader of the group, Ross Dowson, sought legal redress against the RCMP. Kopyto fought his case in the federal court, in Ontario's provincial criminal courts, in the Supreme Court of Canada, and even in the United Nation's Human Rights Committee.

A slander action against the RCMP was dismissed by the Federal Court of Appeal which ruled that security service officers had "absolute immunity" from civil suit. The criminal charges were blocked by the Ontario Attorney-General's office for four years. The McDonald Royal Commission blocked an application by Kopyto to call evidence into RCMP wrongdoing and cross-examine witnesses at its hearings. The United Nations Human Rights committee refused intervention under pressure from the federal government. Criminal charges were not laid despite a justice of the peace's opinion that one of the RCMP officers, since promoted to Director General of the Ottawa Region of the Security Intelligence Service, appeared to be guilty.

Finally a Small Claims Court action, delayed for several years came to trial last year before Judge Marvin Zucker. His judgement, released last December, found that the RCMP was only following orders from superiors in circulating the phoney letters, and therefore was immune from liability. Thus the discredited Nuremberg Doctrine, argued unsuccessfully by the Nazis before the International War Crimes Tribunal in 1946, was resurrected successfully in Canada in 1985. As a result, not a single RCMP officer outside of Quebec has been found liable in the civil or criminal

courts, despite hundreds of documented and admitted illegal acts.

Despite the legal defeats, eight years of litigation by Kopyto against the RCMP had the following impact:

- The uncovering before two Royal Commissions of the existence of a massive secret RCMP operation code-named Checkmate which included falsifying income tax returns, blackmail, break-ins and psychological terrorism against dissidents.

- A unanimous precedent-setting decision by the Supreme Court affirming the historic right of private prosecution.

Yet the same government that did everything possible to block the prosecution of the RCMP has shown amazing enthusiasm for charging the lawyer who acted on behalf of the RCMP's most persistent protagonist in the judicial system.

Why the charge was laid

Harry Kopyto's persistence in speaking out against RCMP and police abuse has resulted in his being characterized by the media as "a perennial thorn in the side of the justice system."

He mobilized 30 lawyers who offered to volunteer \$300,000 worth of their time to the federal solicitor-general's department which claimed it had neither the time nor the resources to prosecute the RCMP lawbreakers.

He presented a petition and made submissions on behalf of 40 lawyers to the Law Society regard-

The first Toronto project initiating our drive for funds for the Harry Kopyto Defence Committee is being sponsored by June Callwood, journalist, Rabbi Reuben Slonim, MP's Svend Robinson and Lynn McDonald, MPP Evelyn Gigantees, Bromley Armstrong of the Ontario Labour Relations Board and Judy Rebick of the Ontario Coalition for Abortion Clinics.

Harry Kopyto Defence Committee

372 Bay Street, Suite 1708
Toronto, Ontario M5H 2W9 (416) 361-1404

Toronto human rights lawyer Harry Kopyto has been charged with criminal contempt of court for a statement in an interview which appeared in the daily press, that the courts in this country "are warped in favour of protecting the police".

In addition, he also faces disciplinary proceedings from the Law Society of Upper Canada as a result of this statement. At the same time, two police officers charged with obstructing justice and in one case, perjury, are suing Kopyto for a million dollars for making statements regarding police abuse.

The Harry Kopyto Defence Committee has been founded to protect freedom of speech which we believe is the central issue in these cases. We hope to build community pressure to have the charge dropped. We want to raise funds and support for the legal defence.

The right to freedom of expression must include the right to criticize the judicial system and the police.

The repression of the free flow of critical thought can only strangle the exchange of views and opinions needed to ensure the preservation and the development of a free and democratic society. Many lawyers have pointed out that the charges were laid because of Harry Kopyto's record for speaking against police abuse.

Harry Kopyto has successfully fought approximately 25 precedent setting cases which have had an important influence on the development of Canadian law. He has fought cases which have enlarged the rights of tenants, blacks, workers, women, gays and prisoners. He was the lawyer in the Damien case (the first gay rights case in Canada), the McDonald case which established that a woman could not be fired from her job because of her sex and the Vancouver Sun case, regarded as the key freedom of press case of this decade. His cases have caused important changes in human rights law, criminal law, police search and seizure procedures and in prisoners' rights law.

The comments resulting in the contempt charges were made after 8 years of litigation against two R.C.M.P. security service officers who admitted circulating phoney letters within a legitimate labor and socialist group in order to destabilize and destroy it. The group was targetted by the R.C.M.P. with federal cabinet approval for a dirty tricks campaign. One of the group's leaders was forced to go to the Supreme Court of Canada in order to have his right to lay charges affirmed after the Attorney-General of Ontario blocked him for 4 years.

Harry Kopyto's defence has already received support from leading members of the Canadian Civil Liberties Association, the Canadian Bar Association, the Criminal Lawyers' Association, the Law Union of Ontario and the Delos Davis Law Guild. We are planning media conferences, demonstrations, rallies, petitions, delegations, fund-raising benefits and the presentation of briefs. The committee has been initiated by an advisory group which includes practising criminal lawyers and law professors. We need your financial support to help meet our goal of \$50,000.00 to defray the costs of the defence. This is a modest goal considering the need to defend Harry Kopyto in three separate cases against institutions which have unlimited access to funds and will undoubtedly appeal any defeat. We also need your time and energy to contact others and help organize the activities necessary in order to ensure that justice is done.

3-10-86

- ☐ Please add my name as an endorser of the Defence Committee
- ☐ Enclosed please find my contribution to assist with the legal defence payable to the Harry Kopyto Defence Fund c/o Iler, Campbell & Associates, Barristers & Solicitors, 136 Simcoe Street, Suite 201, Toronto, Ontario M5H 3G4

Name: _____ Telephone: _____

Address: _____ City: _____ Code: _____

Initial Legal Advisory Committee (partial list only):

Charles Campbell, Angie Codina, Paul Copeland, Professor Harry Glasbeek, Peter Hryn, Robert Kellerman, James Lockyer, Professor Michael Mandel, Michele Meakes, Jack Pinkosfky, Charles Roach.

pres. ...
salesman was rem...

...worth of food
...which I since have
...unable to collect

Colleagues rally around lawyer in contempt case

By Rick Haliechuk Toronto Star

Toronto lawyer Harry Kopyto showed up yesterday in a small Osgoode Hall courtroom with nine lawyers, who will take part in defending him on a charge of contempt of court laid by the Ontario attorney-general's ministry.

And Kopyto vows that by the time the trial begins, he'll have at least 17 criminal lawyers acting on his behalf.

Kopyto is charged with contempt for scandalizing the court by virtue of remarks he made about the judicial system in December after a Provincial Court judge dismissed a lawsuit by his client, Ross Dowson, against two Royal Canadian Mounted Police officers.

The notice of the charge quotes Kopyto as calling the ruling "a mockery of justice. It stinks to high hell. It says it is okay to break the law and you are immune so long as someone above you said to do so. Mr. Dowson and I have lost our faith in the judicial system to render justice."

Although a date for his trial was to have been set yesterday, Ontario Supreme Court Chief Justice William Parker agreed to a defence request for an adjournment until April 15.

Parker appeared surprised when Charles Roach, one of Kopyto's lawyers, told him that more lawyers want to sign on.

"He must have a very weak case if nine aren't enough," Parker joked.

Outside Osgoode Hall, Kopyto

said the fact at least 17 lawyers will act for him is proof of the feeling within the profession that the charge against him is unjust.

"There's no way any lawyer should be subject to the criminal law for expressing views on the judicial process," he said.

Kopyto again challenged Attorney-General Ian Scott to a public debate on whether the police get preferential treatment in the courts, as Kopyto alleges.

At times, Kopyto, accompanied by his children Marc, 11, and Erica, 7, had to strain to make himself heard over the shouts of an angry former client.

Walking back and forth behind the crowd, the man kept shouting: "You're a goddam liar . . . You stole my money!"

Asked who the man was, Kopyto replied, "A guy I tried to help once."

Once the trial begins, Kopyto will ask that the charge be heard by a judge and jury, not just a judge alone.

"We don't think we could get an impartial trial without a jury," Roach told reporters outside the court.

"He can't have a fair trial in light of what the attorney-general has said in Parliament and publicly," Roach maintained.

Angie Codina, Kopyto's law partner and another defence lawyer, said those acting for Kopyto agree with him that the courts usually give preferential treatment to the police.

A committee has been set up to raise money to pay for the defence, although the lawyers involved have agreed to charge only nominal fees, Codina said.



Kopyto

Picture yourself a winner in

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The LAW UNION NEWS

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Spring 198

THE QUEEN V. KOPYTO:

An assault on lawyers' free speech

By Richard Fidler

Charging Harry Kopyto with "contempt of court" is an obscene irony. No one in the legal profession has fought with greater tenacity for the principle that the police in this country are not above the law. For more than eight years Kopyto and his client Ross Dowson battled their way through every available judicial forum, from the Small Claims Court to the Supreme Court of Canada, seeking to expose and bring to justice RCMP officers who acknowledge they broke the law.

In sharp contrast is the record of Kopyto's accuser, the Attorney General, and his federal counterpart. Three Royal Commissions documented that RCMP officers committed literally thousands of crimes — from illegal mail-opening to misuse of confidential medical, taxation, and unemployment insurance records; from trespass, break-ins and burglary to kidnappings and issuing fake "terrorist" communiqués; from arson and theft of dynamite to infiltration of legal political parties and thefts of membership lists, and even spying on the Quebec Cabinet — all of this with the acquiescence, knowledge, or direct connivance of senior Federal ministers. Yet the chief law officers of the Crown chose not to prosecute even a single RCMP lawbreaker outside the province of Quebec. Not one victim of these police crimes has been compensated. It was the most spectacular failure of legal justice in recent Canadian history.

And now the Attorney General is attempting to silence the lawyer most identified with the campaign to bring the police criminals to justice. Who, indeed, manifests contempt for the judicial system and the rule of law? Let the facts speak for themselves.

In December 1977 Kopyto filed suit for defamation in the Federal Court on behalf of Ross Dowson. The statement of claim alleged that Dowson and other former members of the League for Socialist Action had been libelled in statements by RCMP

Cont'd on p. 9



JANUSZ UIBERALL

Harry Kopyto at Osgoode Hall talks with some of his counsel after his first appearance on March 17.

Prepaid Legal Services Plan

By Diana Majury

Five to ten years ago when prepaid legal services were first being discussed in Canada, many labour unionists were sceptical about the concept. Perhaps never having themselves needed the services of a lawyer or never having thought much about the need for lawyers or the cost of legal fees, these sceptics saw prepaid legal services as a make-work project for lawyers. They tended to share the common public perception of lawyers as avaricious and self-interested, out to protect themselves and line their own pockets. From this vantage point, prepaid

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However, in light of practical reality, this preoccupation with freedom of choice seems somewhat ill founded. Most lower and middle income Canadians do not know a lawyer and do not know how to go about finding one. Studies indicate that, second to fears related to the anticipated cost of legal services, the problem of selecting a lawyer is one of the major factors which inhibits consumers from seeking the services of a lawyer. When, in practice, freedom of choice frequently amounts merely to the freedom to select a random name from the yellow pages of the phone book, one has to question the value which is being protected.

Surely more important than the often illusory freedom to choose one's lawyer is the freedom for groups to be able to design and establish the legal service plan which will best suit the needs and interests of their members. This would be a more meaningful freedom of choice. No doubt, some regulation of prepaid legal service plans is required in order to protect the public, but overregulation will only serve to restrict the development of prepaid legal services and thus permit the *status quo* of inaccessible legal services to continue.

The Potential of Prepaid Legal Services

Prepaid legal service plans can make legal services available to those who might not otherwise be able to afford them. At the very least legal service plans offer a financial planning mechanism with respect to anticipated legal fees. Given the increasing legalization of our society and the increasing inaccessibility of legal forums to non lawyers, access to legal services is becoming increasingly important. In addition, closed panel plans can, in some situations, provide their members with the advantages of group negotiating power, for example on consumer issues which affect a number of the plan members. Similarly, a legal service plan can provide the vehicle for group organizing around shared legal problems. Many plans offer educational seminars on legal issues and encourage self-help approaches to legal problems.

Access to legal service plans is, however, restricted. The vast majority of prepaid plans in the U.S. are group plans negotiated by labour unions for their members as a benefit under their collective agreement. However unions are not the only organizations involved in prepaid legal services. Other groups such as credit unions and cooperatives have set up plans for their members. Insurance companies and benefits companies, such as Green Shield and Blue Cross, even offer individual legal insurance policies. These individual plans are usually somewhat

more expensive because of the increased costs involved in marketing and administering the plan on an individual basis and the problem of adverse selection by individuals in anticipation of upcoming legal expenses.

Legal service plans are designed to make legal services available to those not eligible for legal aid and yet not really able to afford fee for service legal fees (estimated to be approximately 70% of the population). They are in fact the least available to those who most need them — non-organized workers and low income persons. However, the limited availability of prepaid legal services is more a comment on the social context in which we live than on the concept of prepaid legal services per se. It is hoped that the advent of prepaid legal services will open up new delivery and funding systems for legal services and will provide some insights into the means to provide legal services to those who are presently completely shut out of the legal process.

If successful, the challenge by the UAW against the Law Society of Upper Canada will have a significant impact upon the legal profession and upon the delivery of legal services. A victory would not only facilitate the introduction of prepaid legal services to this country, but would also open the door for all sorts of innovations in the delivery of legal services. . . And this, of course, is exactly what the Law Society fears. ●

Diana Majury is a law doctoral candidate, working in Toronto. She is the former Director of the "Prepaid Legal Services Research Project" at Windsor Law School.

Lawyers free speech

Cont'd from p. 1

Chief Supt. Robert Vaughan to R.M. McLeod, acting assistant deputy Attorney General of Ontario, in which Vaughan said LSA members were "subversive elements" who had "infiltrated" the NDP and its Waffle group. This statement was read out in the Legislature by Attorney General Roy McMurtry. Three and a half years later, before the case had even got to examination for discovery, the Federal Court of Appeal struck out the statement of claim on the grounds that the RCMP report on which it was based was written in the course of duty and thus enjoyed "absolute privilege." It was the first time immunity from lawsuits had been extended to cover statements by a police officer.

Leave to appeal this decision was refused by the Supreme Court of Canada in September 1981. Subsequent appeals by Dowson to the Federal Cabinet and to the United National Human Rights Committee met with no success.

Explaining the Terms

Prepaid Legal Service Plans

Prepaid legal service plans provide a means of paying a set figure in advance for legal services which may be needed or used in the future. Based on the insurance principle of spreading the cost, and taking advantage of the reductions available through group purchasing, prepaid legal services should reduce the costs of legal services to the individual.

Open and Closed Panels

Under an open panel legal service plan, the member engages the services of the lawyer of her/his choice and is reimbursed by the plan up to its fee limits for the services provided.

Under a closed panel plan, legal services can only be obtained from a group of lawyers selected by the plan sponsor — either staff lawyers to the plan or lawyers in private practice who have contracted with the plan to provide services to its members.

In October 1981 the Supreme Court of Canada ruled that "police informer privilege" extended to medical personnel who gave the RCMP confidential information from patients' medical files, and that the confidentiality provisions in the Ontario *Hospitals Act* applied only to hospital boards, and not to hospital employees. This sweeping extension of police powers effectively prevented the Krevier Commission from getting access to the names of police who had acquired such information and had used it, among other purposes, to attempt to disrupt the LSA led by Dowson.

In a subsequent ruling, the Supreme Court held that Quebec's Keable Commission investigating illegality in the wake of the War Measures crisis had no right to require disclosure of the identity of police informers, even where such informers had committed unlawful acts.

Meanwhile, in August 1981 the McDonald Commission had finally issued its report, listing many RCMP crimes but provi-

ding no names of offenders. Solicitor General Robert Kaplan told the press that the RCMP would continue much of the illegal activity they had carried out in the past, and insisted that the police could not be bound by the same laws as private citizens. About 40 Ontario lawyers signed a petition initiated by Harry Kopyto and Michael Mandel asking the Law Society to investigate Kaplan, an honorary bencher, for possible professional misconduct. More than a year later the Law Society dismissed the complaint. Kaplan's statements were "expressions of government policy," wrote Stephen Sherriff, the LSUC's senior counsel in disciplinary matters, and even if the Solicitor General's legal opinions were wrong, the expression of government policy could not be considered conduct unbecoming a member of the legal profession.

In August 1983 Justice Minister Mark MacGuigan (as he then was) announced that the federal government had decided a year earlier not to prosecute any Mounties for

illegal activities because it would be too much work and might be too late. Furthermore, there would be no disciplinary measures within the RCMP because Commissioner Robert Simmonds had consulted former judges and decided that disciplinary action "would not be appropriate." Harry Kopyto quickly rounded up 30 criminal lawyers in Toronto alone who volunteered to donate about \$250,000 worth of their time to assist the prosecution of the RCMP officers. MacGuigan turned him down.

Only in Quebec, where the government party had been a victim of RCMP lawlessness, were there any prosecutions. Of the 17 Mounties charged, only one was tried and convicted: he got six months' probation and a six months' suspended sentence (and no demotion). Another, charged with kidnapping, pleaded guilty to unlawful confinement and was given an unconditional discharge. His accomplice pleaded that he had

committed the same offence under orders, and was given an absolute discharge.

On the basis of RCMP admissions to the Krever and McDonald commissions, Ross Dowson instructed Kopyto in early 1980 to initiate a private prosecution of two senior RCMP officers. Assistant Commissioner Stanley Chisholm and Supt. Ronald Yaworski had admitted they were involved in a fake letter-writing campaign aimed at creating dissension in the LSA and its youth organization, the Young Socialists, in the early 1970s, as part of Operation Checkmate. (The incident is described as Operation No. 13 in the Supplement to Part VI of the Third Report of the McDonald Commission. It was first documented, together with other disclosures of Operation Checkmate operations, in a brief I presented to the McDonald Commission in 1978.)

After three adjournments of the pre-inquiry as a result of RCMP stalling, McMurtry stepped in and issued a stay of proceedings. Admitting that the officers were involved in "at least an apparent commission of a crime," the A-G maintained "it would not be in the public interest to prosecute." Kopyto applied for mandamus. He lost in the High Court, and again in the Court of Appeal. (The courts also upheld the A-G's stay of proceedings initiated by Paul Copeland on behalf of Howard Buchbinder for RCMP possession of documents stolen from Praxis Corporation, an anti-poverty research group. Intervening in both appeals on behalf of the Canadian Civil Liberties Association was Ian Scott, as he then was.)

In July 1981 Dowson tried again to get a Justice of the Peace to issue process against the officers. Again, the A-G intervened with a stay. However, in October 1981 the Supreme Court ruled that the A-G could not stay proceedings until after the JP had determined whether there were sufficient grounds to bring the matter to trial. But things quickly bogged down again as JP James Allen insisted on examining Yaworski, and the RCMP moved for a writ of prohibition. After a series of appeals and further delays JP Allen dismissed the information, claiming there was insufficient evidence to indict the officers.

Thwarted in the Federal and criminal courts, Dowson sought justice once more, this time in the Toronto Small Claims Court, suing Chisholm and Yaworski for injurious falsehood. Again the RCMP stalled: Chisholm admitted to the Court that he had authorized the anti-LSA disruption campaign, but his lawyer, John Laskin, sought dismissal on the group, among others, that Dowson had waited too long to commence the action! Judge Zuker eventually ruled that the action could proceed, although not as a class action as Kopyto had

Cont'd on p. 11

Toronto human rights lawyer Harry Kopyto has been cited for contempt for "scandalizing the court" by stating publicly that the courts in this country "are warped in favour of protecting the police."

Kopyto also faces disciplinary proceedings from the Law Society of Upper Canada as a result of this statement. In addition, two police officers facing criminal charges of obstructing justice and in one case, perjury, have sued Harry Kopyto for a million dollars for making statements regarding police abuse.

What You Can Do

The *Harry Kopyto Defence Committee* has been established to raise funds and support for the legal defence. Harry Kopyto's defence has already received support from leading members of the Canadian Civil Liberties Association, the Canadian Bar Association, the Criminal Lawyers' Association, the Law Union of Ontario and the Dellos Davis Lawyers Guild. We are planning media conferences, rallies, petitions, deletations, social activities and the presentation of briefs on the central issue of freedom of speech. We hope to build community pressure to have the charges dropped. The committee has been initiated by an advisory group which includes practising criminal lawyers and law professors. We need your financial support to help meet our goal of \$50,000.00 to defray the costs of the defence.

This is a modest goal considering the need to defend Harry Kopyto in three separate cases against institutions which have unlimited access to funds and will undoubtedly appeal any defeat to the Supreme Court of Canada. Should Harry Kopyto lose the one million dollar libel action against him, he will be responsible for tens of thousands of dollars of costs. We also need your time and energy to contact others and help organize the activities necessary in order to ensure that justice is done.

For further information please contact the:

Harry Kopyto Defence Committee
372 Bay Street
Suite 1708
Toronto, Ontario
M5H 2W9

Telephone: (416) 361-1404
Contributions may be sent to the:

Harry Kopyto Defence Fund
c/o Iler, Campbell & Associates
Barristers & Solicitors
136 Simcoe Street
Suite 201
Toronto, Ontario
M5H 3G4

Initial Legal Advisory Committee:
(partial list only), Charles Campbell, Angie Codina, Paul Copeland, Harry Glasbeek, Peter Hryn, Robert Kellerman, James Lockyer, Professor Michael Mandel, Jack Pinkofsky, Charles Roach.

Kopyto played by the rules

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framed it. An RCMP appeal against this decision was unsuccessful. The trial was held in October 1985, and on December 17 Judge Zuker issued his decision: "Even if the defendants could be said to have acted wrongfully, they were clearly acting in the performance of their functions or role." Claim dismissed.

It was at this point that Harry Kopyto made the statements attributed to him in the A-G's notice of motion.

Throughout the RCMP litigation Kopyto has fought on behalf of his clients for some of the most cherished principles of the judicial system in this country. The equality of all — citizens and staff officials alike — before and under the law. The duty of senior law officers of the Crown, such as the Attorney-General and Solicitor General, both federal and provincial, to uphold adherence to the rule of law. The responsibility to bring suspected and self-confessed criminals before the bar of justice. The right of a private citizen to prosecute offenders against the safety and security of the citizenry — an especially important right when the offenders are themselves the employees of the chief law officer.

Not least important, throughout their long battle Kopyto, his client, and their supporters, have fought to eliminate the stigma of "subversion" that is used so often to smear and stifle the expression of radical dissent.

Although on occasion the courts upheld procedural due process, more often than not their rulings in the course of the RCMP litigation served to frustrate the exposure of police crimes and to widen the protection traditionally afforded police informers, senior state officials, and political policing in the name of "national security" and "privilege." Where the courts were given a chance to make substantive judgments on RCMP lawbreaking, they consistently absolved the Mounties' conduct as being "in the course of duty" or handed down the most lenient sentences possible.

Kopyto played by all the rules — *their* rules. He confronted, and occasionally defeated, a high-powered, high-paid battery of lawyers retained by the RCMP and their political masters. He fulfilled in exemplary fashion the strictures of Rule 8 of the Rules of Professional Conduct, "fearlessly to raise

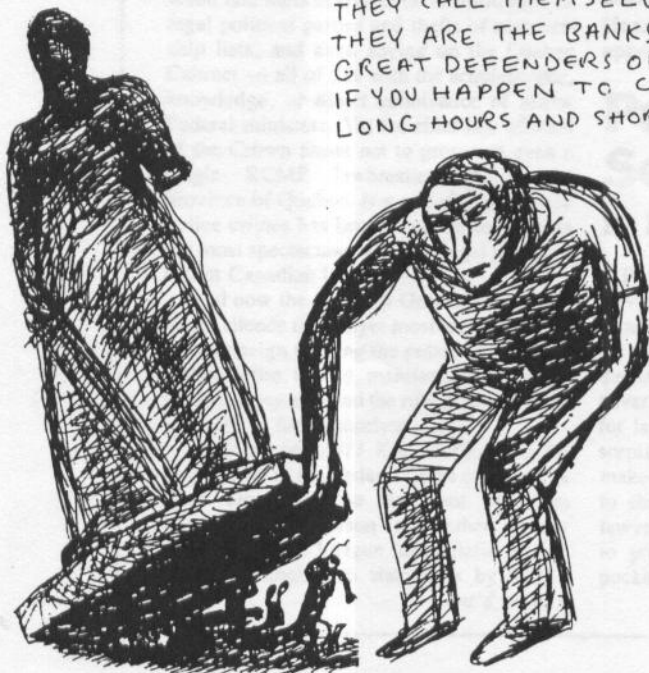
every issue, advance every argument, and ask every question. . . which he thinks will help his client's case. . ." He did not hesitate to speak out where he saw injustice, as counselled in Rule 12. His criticism of the tribunals and of the administration of justice as revealed in the case of clearly-documented and acknowledged RCMP illegalities, was bona fide, and reflected his burning desire to improve the judicial system, not to undermine it.

In the best sense of the phrase, Kopyto has fought for the rule of law, and against the capricious, cynical rule of political expediency practiced by those who would now silence him.

If they were to succeed, it would be a body blow against all lawyers who seek to improve the administration of justice in this country. A judicial system that cannot encompass a Harry Kopyto is a system that can't deliver justice.●

Richard Fidler, currently living in exile in Hull, Québec, hopes to be admitted to the Ontario bar this spring.

IN THE SHADOWS LURK THE CREEPY-CRAWLIES
THEY WANT TO BLOCK THE PATH OF UNIONISM
THEY WANT TO DO IT UNDER THE CHARTER OF RIGHTS
THEY CALL THEMSELVES 'FREEDOM OF CHOICE'
THEY ARE THE BANKS, INSURANCE COMPANIES AND RETAILERS
GREAT DEFENDERS OF CHOICE —
IF YOU HAPPEN TO CHOOSE
LONG HOURS AND SHORT PAY



Comment

Cont'd. from p. 2

sional Court's door hoping to deal the Ontario censor board a second, knock-out, constitutional blow.

Critical activists frequently feel uncomfortable arguing about "freedom of expression." Some feel it is a dangerous illusion to accept that we have it now. Some feel controls on the rich and powerful would be necessary in any just society anyway, to prevent "an ideological coup." Others maintain that a greater flourishing of expression is in fact a very important aspect of what we really want. Some would agree, but say other issues are more pressing.

Not all of the present situations were intended or expected, but they present a good opportunity for reflection. Hopefully, as one of this issue's authors states, "to act is to learn."●

U.S. 8.95 MC

Accused of scandalizing court

Lawyer's cause draws support

BY KIRK MAKIN
The Globe and Mail

Since he was charged with the rare offence of "scandalizing the court," a radical Toronto lawyer whose work never failed to madden the authorities has quickly become a cause célèbre.

The fight to acquit Harry Kopyto has grown to include lawyers of all political stripes, fringe-party activists and supporters from the arts and the media.

In recent interviews they cited the same reason for their support — if Mr. Kopyto can be silenced for criticizing the judicial system, then no critic is safe.

"Most people do disagree with him politically," said Robert Kellermann, a lawyer and a key supporter. "But it is interesting how they have put aside how they feel about his politics. I've even had Crown attorneys say they think it is outrageous that he is being prosecuted."

The charge was laid after the publication of Mr. Kopyto's remarks about a case he had just lost. A Small Claims Court judge had dismissed a civil suit brought by Ross Dowson against two RCMP officers who surreptitiously tried to disrupt a leftist organization.

"This decision is a mockery of justice," Mr. Kopyto was quoted as saying. "It stinks to high hell." He said Canadian courts are "warped in favor of protecting the police. The courts and the RCMP are sticking so close together you'd think they were put together with Krazy Glue."

In an interview yesterday, Mr. Kopyto said he reacted out of frustration after several years of beating his head against a judicial wall in the Dowson case.

He said his defence team now consists of 25 to 30 lawyers. One tactic will be to attack the charge as a violation of the constitutional right to freedom of speech and expression, he said. They will also call expert witnesses with broad knowledge of how the courts have historically treated the RCMP.

"Never before in Canada have so many lawyers come together collectively to work on one case," Mr. Kopyto said.

Some may be prepared to go even further, Mr. Kellermann said. "At some point, other lawyers may feel compelled to put themselves on the line by making similar comments" about the judiciary.

Mr. Kopyto said he has also received about 100 letters of support from people as diverse as the leader



The Globe and Mail

Harry Kopyto has consistently maddened the authorities.

of Quebec's Social Credit Party and a group of B.C. Doukhobors. In addition, more than \$5,000 has been raised.

Contrary to what some might think, Mr. Kopyto said, he does not relish the battle. "We're not interested in martyrs. To tell you the truth, I'm terrified by what they can do to me. I've got a wife and two small children. It could put me out of business."

He has not lost his sense of humor about the whole affair, however. At a fund-raising party on Saturday attended by about 100 people, he delighted his supporters with a poem entitled Ode to Krazy Glue. One section read:

*This product has been put to the test,
in instances wide and varied:
To fix glass or wood, and it's well
understood,
To help police who feel Harried.*

Many of Mr. Kopyto's supporters are drawn from the ranks of left-leaning criminal lawyers in Toron-

to. Some of them said they were particularly shocked that when the authorities went after Mr. Kopyto, the Attorney-General was Ian Scott.

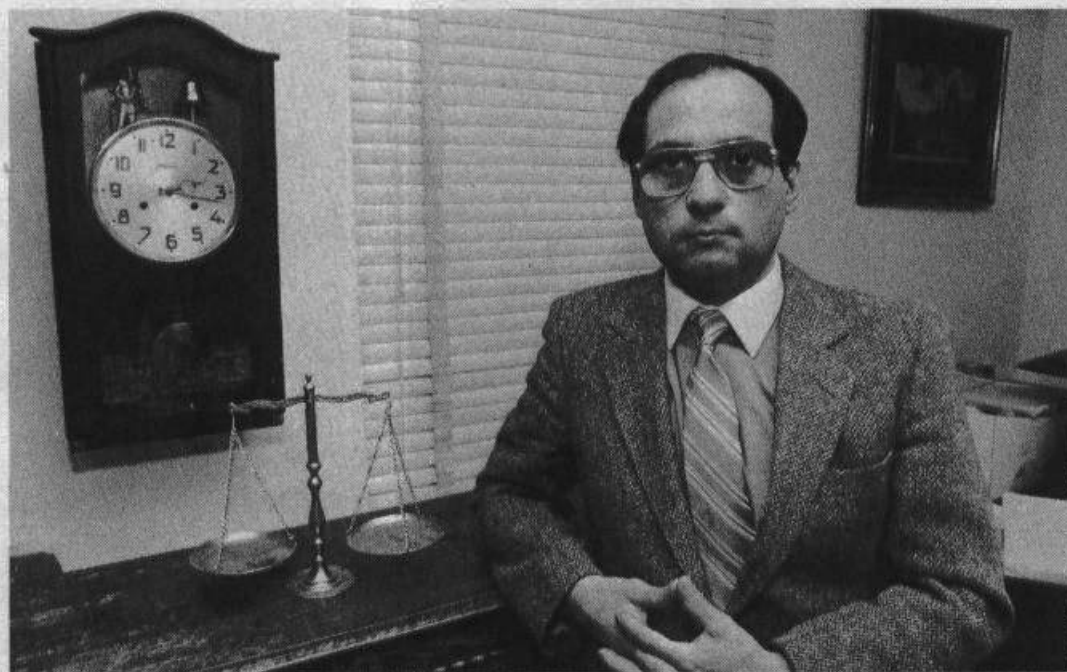
As a practicing lawyer, Mr. Scott maintained a reputation for fighting on behalf of civil liberties. "I think maybe he didn't think it out very carefully," Mr. Kellermann said.

Alan Borovoy, general counsel for the Canadian Civil Liberties Association, said the group may try to intervene in the Kopyto case. "This case could cast a chill over legitimate criticism of the courts. This is a very dangerous matter."

Other countries with similar systems of justice long ago discarded charges such as scandalizing the court, he said.

Mr. Borovoy said he was unhappy that Mr. Scott justified the charge recently by saying lawyers must set a high standard of behavior. "Criminal sanctions should not be used to exact higher standards for one sector of society."

Trials of a legal gadfly



Reformer Kopyto in his Toronto law office: challenging a legal charge

Toronto lawyer Harry Kopyto is accustomed to living at the centre of controversy. A defender of human rights causes, Kopyto, 39, has frequently taken unpopular positions. But currently he has set aside his gadfly status and gained the support of many of his more conventional legal colleagues in one of the most heated disputes of his career. In December, 1985, after losing an eight-year legal battle to prove RCMP subversion of left-wing organizations, Kopyto declared in a newspaper interview that the courts were so "warped in favor of protecting the police" that it seemed as though the two were "put together with Krazy Glue." Two months later Ontario Attorney General Ian Scott ordered that Kopyto be served with a rarely used contempt citation for "scandalizing the court." That charge, expected to go before the courts this fall, has raised concerns in the Ontario legal community about the right of lawyers to criticize the justice system. Said Toronto criminal lawyer Clayton Ruby: "The issue here is freedom of speech."

Kopyto's troubles with the justice system date from 1977. Already known as a crusading lawyer for his defence of the rights of blacks, gays, women, prisoners and the disabled, Kopyto was approached by Ross Dowson, a former executive secretary of a then-defunct left-wing activist organization, known as the League for Socialist Action (LSA). Dowson asked Kopyto to lay charges against the RCMP for allegedly engaging in illegal actions which had disrupted the LSA in the early

1970s. Kopyto agreed but lost his initial civil suit for slander in 1981, when the Supreme Court of Canada ruled that security service officers had "absolute immunity" from civil suits. The courts blocked similar attempts by Ko-

pyto to initiate criminal proceedings on the same issue, prompting the outspoken lawyer to claim that the ruling gave tacit approval to the RCMP's alleged activities.

Undaunted, Kopyto pursued another course and, in 1982, launched a \$3,000 suit against the RCMP in a Toronto small claims court. But when the case came before Judge Marvin Zucker three years later, Zucker dismissed it. Within hours of reading that ruling, Kopyto made the statements which resulted in Scott's citation.

Some members of the province's legal community say that the citation challenges the public's right to criticize the judiciary. They are concerned that ordinary citizens, as well as lawyers, may face charges of contempt for statements that are considered disrespectful of the courts. Support for Kopyto has grown from both outside and inside the legal community. A 30-member defence team is now being assembled for the Sept. 22 trial. If convicted, Kopyto faces fine or imprisonment and the loss of his right to practise law. An avowed Marxist and social reformer, Kopyto says that he does not want to become a martyr. He added, "I just want to go about my business."

—MORTON RITTS in Toronto



WARREN

OBSCURE LAW THREATENS OUR FREEDOM

In one of the strangest legal cases in Canadian history, a Toronto lawyer is facing possible imprisonment, a fine and the loss of his right to continue to practice law.

The Harry Kopyto case involves the RCMP, Canadian judges, left-wing politics, elected Members of Parliament, the Ontario attorney general, an Osgoode Hall law professor and the entire judicial system.

It goes back to 1978 and — despite the intrigue — there appears to be a conspiracy of silence in some of the establishment media about this case.

Lawyer Kopyto tried for eight years to have the RCMP charged with subversion after an intensive investigation of a far-left political group, the League for Socialist Action.

The LSA was a spin-off of part of the New Democratic Party's now infamous Waffle Group and counted supporters across the country, including several well-known left-leaners in Winnipeg.

After he lost his battle, which went as far as the United Nations and the Supreme Court of Canada, Kopyto made several allegations in a newspaper interview. Among them, he suggested "the decision was a mockery of justice."

He said:

"The decision stinks to high hell. Canadian courts are warped in favor of protecting the police.

"The courts and the RCMP were sticking so close together, you'd think they were put together with Crazy Glue."

In an interview with me earlier this month, Kopyto said:

"I spoke in frustration".

He told me that the RCMP, in an attempt to bust up the League for Socialist Action, circulated phony letters with trumped-up charges against some of their members . . . one included a suggestion that a top official was mentally incompetent.

Kopyto claims the Mounties admitted the allegations before the 1981 McDonald Commission into RCMP wrongdoings.

But, after the sideswipe in the press, Ontario Attorney General Ian Scott invoked a little-used section of common law ("scandalizing the courts"). There is no such charge in the U.S.; a similar charge has never been used over the past 50 years in Britain; it has never ever been used in Australia.

NDP justice critic Sven Robinson and Law Professor Michael Mandel are supporting Kopyto, along with a defence committee and a 30-member legal team who have headquartered at 372 Bay St., Suite 1708, Toronto, M5H 2W9 (416.361-1404).

"The feeling now is that the whole legal profession is under attack and there is an attempt being made to silence criticism of the courts," Kopyto told me.

"This is seen as an attack on those lawyers who tend to be critical of the judicial system and those lawyers who tend to be outspoken and those lawyers who tend to stand up for unpopular causes . . . who stand up for victims of not only police harassment, but for tenants, for poor people, for Blacks, for women . . . for lawyers who are attempting to make sure the system makes decisions that are consistent with real justice."

Are you suggesting, Mr. Kopyto, that this action of scandalizing the courts has been taken against you because you were a lawyer representing a group that did not have wide public support . . . or could that charge be levelled against Peter Warren as a news commentator?

"Lawyers are special people under this incredible system. I did not attribute improper motives to a judge. I did not make a racist comment. I made criticism of a social institution."

Stay tuned, folks. Harry Kopyto faces the music in September and it strikes me what we've got here is a case of freedom of speech.

Son
June 19-86

Give us an
overview

(R.D. Notes)

no mention of
Dowson

THE HARRY KOPYTO DEFENCE COMMITTEE

721 Danforth Ave. (near Pape),
Toronto, Ont. M4J 1L2 • Tel. 461-3605

***Amnesty for Kopyto, grant a pardon
from an abhorrent sentence under the disreputable charge of "scandalizing the court."
Permit private citizen prosecutions without
judicial consent on indictable offenses and
appeals.***

I have recently finished an investigation testing the briefs of prosecutors, defence lawyers, police officers, citizens and university students regarding police credibility, deceitfulness and corroboration. It is clear from the data that prosecutors differ from all other groups except police in trusting police behavior. This study will be published in a forthcoming issue of the Canadian Police College Journal. If prosecutors can be identified as representatives of Canadian courts (more so than defence lawyers, citizens and students) I think that my study tends to support your published statement that "... Canadian courts are 'warped in favor of protecting the police'..."
If I can be of assistance, please do not hesitate to call.

A. Daniel Yarmoy
Ph. D., Professor

WHAT THEY ARE SAYING ABOUT

THE HARRY KOPYTO CASE

Enclosed is my cheque in the amount of \$50.00
with respect to the defence of Mr. Harry Kopyto.

K. A. Rouff, Solicitor
Corporation of the City of Hamilton

* * *

I have been following the Dowson case and the matter of your contempt of court charges. I, too, often lose my "faith in the judicial system to render justice" as does, I'm sure, any other litigation lawyer. I have seen many decisions which are a "mockery of justice" and which "stink to high hell". I also believe that many judges are unjustifiably biased in favor of police officers and before whom it is virtually impossible to succeed if the vital issue is the credibility of one's client and his witnesses versus the credibility of the police officer. As far as I know most of my colleagues feel the same. For what its worth, I'm prepared to state those views to anyone you may wish if it would help.

D.W. Monteith
Stiver Vale Leck Monteith
Newmarket, Ontario

* * *

On behalf of the Canadian Labour Congress I am pleased to forward to the Harry Kopyto Defence Committee a cheque for the amount of \$150.00.

Richard Mercier
Secretary-Treasurer
Canadian Labour Congress

* * *

I am writing this brief note to express my full support for the cause in which you are presently involved. Your fight is the fight of all and for all of us to express opinions freely. Your victory will be a victory of all and for all those who believe that ideas cannot and would not be chained. Please count me as a full supporter and endorser.

Joe Pantalone
Councillor, Toronto Ward 4

* * *

I happen to believe that the police do receive preferential treatment in the courts. So do many of my colleagues. Prosecuting Harry Kopyto won't change my mind. In fact, your prosecution of Harry Kopyto tends to confirm my opinion

From a letter sent to Attorney-General Scott

Hubert W. Hogle
Hogle & Doretayers, Barrister & Solicitor
Napanee, Ontario

* * *

... Besides you are quoted as having stated that the courts are "warped in favour of protecting the police." I think that you should know by now that it is not nice to state the obvious in clear and unmistakable terms... Your case, if it ever reaches trial, may, indeed, be a watershed case, as well as a real embarrassment to the Attorney General

George C. Amos, Barrister & Solicitor
Kitchener, Ontario

News

Lawyer claims

By LISA KNAP
Silhouette Staff

In an interview which had appeared in the Globe and Mail on December 17, 1985, Toronto lawyer Harry Kopyto was quoted as saying that the courts are "warped in favour of protecting the police." Shortly afterwards, a charge of scandalizing the courts was laid against Kopyto by Attorney General Ian Scott.

Kopyto made this statement after going through eight years of litigation in an attempt to press charges against some senior RCMP officers on behalf of his client Ross Dawson, leader of the labour group League for Socialist Action.

According to Kopyto, the RCMP officers "had admitted before various Royal Commissions that they had circulated phony letters among members of the group in an attempt to cause discord and tension within the group to break them up."

After years of having attempts to lay the charges blocked the case finally came to trial in small claims court. Kopyto said that although the judge admitted the RCMP officers may have been doing something

highly improper, he added that "they were only doing their duty and as such the case had to be dismissed."

It was after the trial that Kopyto made the statement for which charges were brought against him. He is due to appear in court to stand trial on Sept. 22.

Kopyto frankly admits, "I'm terrified. I wish I wasn't in this situation. But now that I am, I'm not going to apologize for expressing my views. All I was doing was stating my opinion."

It is precisely because of the issue of one's right to freedom of speech that Kopyto feels he has garnered so much support from various members of the community. "I think people have supported me because they realize that what's involved in this case is the right to voice criticism about a social institution," he said. Margaret Atwood, Margret Lawrence and Pierre Burton are just some of the people who have come out in his defence.

Kopyto also said that he has received support from other lawyers as well. Because, he said, "I think

they know if I am gagged, this will have a chilling effect on their right to criticize the court system too."

Even with all of this support though, Kopyto expressed great concern about the upcoming trial.

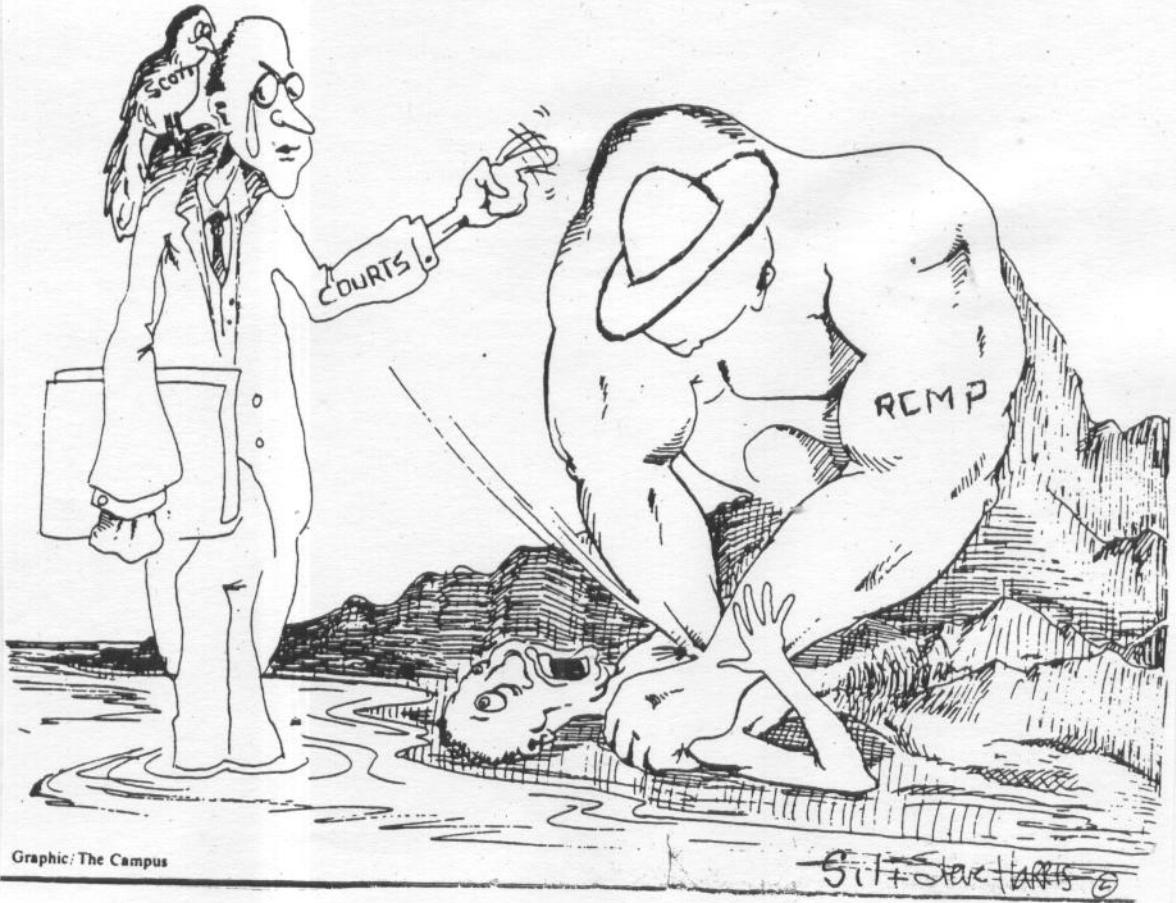
"There is a problem," he said, "in that I'm going to be tried by the very courts who are alleged to have been victimized by my comment."

Because of this Kopyto feels that it is very important to have public support behind him. "I think my case is at the centre of any possibility of reform, so that charges such as this will not be laid against another person again. We have right now, the possibility of changing the law, but it all depends on how much public support I get."

Kopyto readily admits that if convicted it is very likely that he will receive a jail term. "But, he said, "if I'm convicted, I'm going to fight this all the way to the Supreme Court."

About 30 lawyers have offered to defend me and I'm prepared to fight all the way to the end, because the principle of freedom of expression is something which is very important."

unholy alliance



Graphic: The Campus

Judicial bias alleged

Sept 23/86 11.1

Contempt case puts courts on trial

BY DREW FAGAN
The Globe and Mail

The trial of outspoken lawyer Harry Kopyto for contempt of court appears destined to provide a wide-ranging examination of the criminal justice system as his defence team takes aim at his right to allege that courts are biased.

Mr. Kopyto said in an interview after his trial began yesterday that almost 100 people have indicated their willingness to testify in support of his right to say that courts are "warped in favor of protecting the police."

"I'm just the messenger. I'm saying what anyone with an I.Q. over 50 knows to be true," he said. "We'll be calling professors to show there is institutional bias within the judicial system in favor of the police."

In addition, Ontario Attorney-General Ian Scott, who was responsible for laying the charge, and a judge of the Ontario Court of Appeal have been subpoenaed to appear on behalf of the defence in the Ontario Supreme Court trial.

The irony of Mr. Scott's previous role in supporting Mr. Kopyto's protracted legal battle over Royal Canadian Mounted Police wrongdoing that ultimately led to the contempt citation was not lost on the packed courtroom.

Although pretrial legal motions will take part of the week, Mr. Kopyto wasted little time taking the witness stand yesterday and outlining how he and Mr. Scott had worked together on the case before Mr. Scott's entry into politics.

Proving that he remains no shrinking violet despite his unaccustomed role in the prisoner's box, Mr. Kopyto was indignant as he described his fight to have charges laid on behalf of a client against an RCMP officer involved in "dirty tricks."

In 1980, Ontario attorney-general Roy McMurtry stayed proceedings before a justice of the peace who was scheduled to consider laying charges.

Mr. Kopyto said yesterday that his outrage over that decision was best described by Mr. Scott, who wrote at the time that the stay would lead large sectors of the public to believe that two standards of justice exist: one for civilian lawbreaking and another where the RCMP is involved.

They fought the decision together in the courts and wrote an article condemning a judge's refusal effectively to undo Mr. McMurtry's decision.

Unsuccessful in the criminal



Kopyto urges judge in vain that he disqualify himself

arena, Mr. Kopyto and his client, Ross Dowson, launched an attack in the civil courts to make the RCMP pay for systematically disrupting the radical left through its Operation Checkmate in the seventies.

After that damage claim was lost in December, Mr. Kopyto told a Globe and Mail reporter that the decision was "a mockery of justice. . . . It stinks to high hell."

He said "the courts and the RCMP are sticking so close to-

gether you'd think they were put together with Krazy Glue."

The maverick left-wing lawyer was soon facing a contempt-of-court citation for "scandalizing the court."

He told Ontario Supreme Court yesterday that those comments had been aimed at expressing a general indictment of the criminal justice system, including Crown prosecutors, judges, royal commissions, and the attorneys-general of Canada and the provinces. "The whole kit and caboodle."

Mr. Kopyto said outside the courtroom yesterday that a petition was passed among lawyers asking if they agreed with his printed remarks and 75 of them signed it, including such legal luminaries as Clayton Ruby, Paul Copeland and David Cole.

"They are supporting me because if Kopyto goes down, it will have a chilling effect on all lawyers," he said. "This is the most political trial in one or two decades. . . . Not a single lawyer in the country has been charged with scandalizing the courts."

Mr. Kopyto also noted that Mr. Scott had offered to drop the charge if he would apologize to the provincial court judge who dismissed the civil case for damages.

Mr. Kopyto refused. "I have nothing to apologize for."

A welter of legal arguments alleging that Mr. Kopyto's rights under the Charter of Rights and Freedoms are being infringed are scheduled to be put before Mr. Justice Robert Montgomery.

One of Mr. Kopyto's lawyers, James Lockyer, argued yesterday that the court system could not be considered impartial in hearing this case "as this court will be a judge in its own cause as to whether or not there is a disreputable link between the courts and the police."

Mr. Kopyto has a Charter right to be tried by an impartial tribunal, he said, raising a hypothetical comparison with a citizen of the Soviet Union brought before a court for saying the same courts are politically controlled.

"This case is not as alarming, but the analogy makes apparent

→ p. 2 (bias)

from p. 1 (bias)

what this court is doing," Mr. Lockyer said. "The judiciary is the only institution that has placed itself on a pedestal."

A finding that it was impossible for Mr. Kopyto to receive an impartial trial would force the charge to be dropped, Mr. Lockyer said. This would lead to the satisfactory conclusion "that citizens of this country have freedom of speech with respect to every matter."

But Judge Montgomery ruled that the court does not have a personal interest in the case. He concluded that Mr. Lockyer's argument that a jury trial would be a second-best alternative was inappropriate because of legal precedent.

"A judge of this court is the proper person to try such a case."

Judge Montgomery also swept aside arguments that he should disqualify himself from the case because he had been the judge who ruled in 1980 that Mr. McMurry's action in staying proceedings before the justice of the peace was legal.

"No one should be a judge in his own cause and inevitably you're going to have to deal . . . with criticism of your own judgment," Charles Roach, another defence lawyer, told Judge Montgomery.

Mr. Kopyto told the court he had written a sharply worded critique of the judge's decision in a criminal law journal and his lawyers argued that he therefore had a reasonable concern that Judge Montgomery might be biased in

the case.

But Crown attorney Dean Paquette noted that Mr. Kopyto's most damning comments were aimed not at a single judge but the justice system.

Judge Montgomery seemed to follow that reasoning. "I am not satisfied that there has been any demonstration of a reasonable apprehension of bias on the part of Mr. Kopyto, particularly when Mr. Kopyto says that the entire judiciary are in the same boat," the judge said. "I intend to proceed."

The matter of the subpoenas served on Mr. Justice Horace Krever of the Ontario Court of Appeal and Mr. Scott were discussed at the end of yesterday's proceedings as their lawyer, Clayton Powell, sought specific direction on what purpose the defence sought in calling them as witnesses.

Mr. Kopyto said in an interview that the defence wants to have Judge Krever testify about comments he made that criticized as dishonest the actions of judges in certain civil actions.

It is the defence's allegation that Mr. Kopyto is faced with being selectively sanctioned for the type of comment that has been heard before with no judicial aftermath.

The court heard that the defence wants Mr. Scott to produce documents from a 1981 meeting he and others held with Mr. McMurtry about staying proceedings in the justice of the peace.

Ruling left lawyer feeling 'cheated' contempt trial told

by David Miller Toronto Star

At times shouting and wagging a finger at his prosecutor, civil rights lawyer Harry Kopyto has testified that he publicly criticized a court decision because he felt angry, cheated and tricked after eight years of battling "for justice."

In an emotional day-long appearance yesterday at the Ontario Supreme Court, Kopyto said the decision in December, 1981, was the "final straw" in a fight with the RCMP.

He had exhausted all avenues, Kopyto said, and

"I was upset that a person get away with breaking the law because he was acting on a superior's orders. I felt cheated, I felt 'Understand I had lost had no energy, no money been carrying on this fight was like going against a bull. If I couldn't get justice, I claim court, I couldn't get away with it.'"

SEPTEMBER 27 1986

Lawyer may take over own defence for contempt

By Walter Stefanuk Toronto Star

Toronto civil rights lawyer Harry Kopyto was to decide this weekend whether to fire the law-

THE TORONTO STAR

Monday, October 20, 1986

A scandalous law

Ontario Supreme Court Justice Robert Montgomery has declared lawyer Harry Kopyto a criminal for publicly criticizing the judiciary, a decision that points out the need to remove from judges the power to punish persons for "scandalizing the court."

Kopyto lawyers seek ruling on defence bid

OCTOBER 1, 1986

BY DREW FAGAN
The Globe and Mail

dismissing a civil case for damages against two former Royal Canadian

words of Mr. Justice Robert Montgomery: "Expert witness in what? In warble flies, cattle, horticulture or what?"

Kopyto wanted to act as co-counsel in questioning Scott. Montgomery refused, pointing out he already has two lawyers.

"You have just refused me status to represent myself?" Kopyto said.

"No. Are you discharging your counsel?" the judge said. "If you wish to take part in the trial as counsel, you will have to discharge counsel — one or the other."

Lawyer like a 'Socrates' contempt trial judge told

THE GLOBE AND MAIL, SATURDAY, OCTOBER 18, 1986

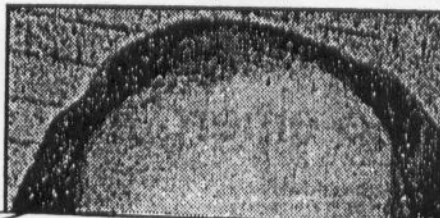
A13

urges protest

Mr. Kopyto's lawyer said. The judge had been an action in

chilling effect on other lawyers, said Angie Codina, one of Mr. Kopyto's lawyers.

"Lawyers will be much more prudent in speaking with the media and commenting



Kopyto is on trial for making a scandalous use of call Provincial y of justice" and RCMP (like) Krazy

at 70 veterinarians Metro area bles shots for than 3 months

fter dismissed by his st Ross Dow's officers.

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her defence lay that such Mr. Kopyto

Kopyto recalls 8-year fight for charges in RCMP case

SEPTEMBER 26 1986

SEPTEMBER 23 1986

Attorney-General said to have backed accused

of his former clients and

→ P. 2 (Sept-Oct '86)

Contempt not issue for Globe

SEPTEMBER 23
The Globe and Mail

The Law Society of Upper Canada has the right to order defence lawyer Harry Kopyto searched for disciplinary hearings being conducted.

BY DREW FAGAN
The Globe and Mail

The Globe and Mail might have published comments made by Toronto lawyer Harry Kopyto that led to a decision dismissing a civil case against two former RCMP officers.

offence of scandalizing the court — a form of contempt of court.

He was charged over comments to a Globe reporter that a judge's decision dismissing a civil case against two former RCMP officers

Defence lawyer David Midani had sought to have Mr. Webster give testimony as an expert witness on public opinion. But Mr. Webster told Mr. Justice Robert Montgomerie that his extensive background in newspaper work did not give him

Criticism of courts vital, trial is told

SEPT. 24, 1986
BY DREW FAGAN
The Globe and Mail

criticism?"

Mr. Kopyto 39 is facing a con-

in the Charter.

"The judiciary does not need this respect for the

the court provides for more decisions than Canada's.

Mr. Kopyto's defence tes-

describes 'body blow' to justice

SEP. 23, 1986

Kopyto hearing important an social-izing a decide

disallowed such defence arguments. The evidence is expected to end today with the judge reserving his decision.

Throughout the hearings, Judge Montgomerie says, defence lawyers have been in conflict over how witness proceedings should be handled.

Mr. Kopyto frequently introduces information

Mr. Kopyto told the court yesterday that his statements to The Globe were not aimed at criticizing as biased the judge who made the ruling but expressed concern

the court must have sufficient knowledge of the background of RCMP dirty tricks and his attempts to have charges laid against a per-

call numerous witnesses his right to make statements about the judge that led to the challenge, who has maintained a legal case to set on edge the establishment, is

Holocaust spurred 'hatred for injustice' lawyer says

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Criticism of judges should be allowed lawyer's trial is told

By Aldred Holden Toronto Star

tives," Paquette maintained.

He added that if Kopyto was D26/THE TORONTO STAR, THURSDAY, OCTOBER 2, 1986



He described his clientele as "poor people who suffer the inequality that comes from not having the means for (adequate) existence . . . people without power, people without influence."

Left-wing activist Ross Dowson, in an interview, applauded Kopyto's commitment to the law and his clients. "That's the Kopyto I know, and I've known him for 18 years."

It was the dismissal of a civil suit launched by Dowson against two RCMP officers allegedly involved

Truth said no defence for contempt

Argument that lawyer's remarks were fair ruled inadmissible

By Alfred Holden Toronto Star

Even if lawyer Harry Kopyto

now limited to approaching judicial committees, MPs, Parliament or Legislatures if they want to

"There's no point in this — there's no point in questions which are

→ P. 2 Sept 86

from p. 1 - Sept '86

Kopyto given ultimatum after di

BY DREW FAGAN

The Globe and Mail

Sept 27/86

A rare court appearance by Ontario Attorney-General Ian Scott to give testimony in a contempt-of-court hearing against lawyer Harry Kopyto fell into chaos yesterday after an agitated Mr. Kopyto rushed out of the prisoner's box.

Mr. Scott had been on the witness stand for about 30 minutes when Mr. Justice Robert Montgomery of the Ontario Supreme Court was told that Mr. Kopyto wanted to assist his team of lawyers in examining the province's chief law enforcement official.

Mr. Kopyto promptly began pointing out why this was necessary — making his way to the lawyer's table as he did so.

"I'm not going to allow you to conduct part of your case," Judge Montgomery said later — giving the lawyer the choice of going head on his own after discharging his lawyers or having them conduct his defence without his assistance.

As Mr. Scott watched from the sidelines, Judge Montgomery was obliged to adjourn the proceedings twice in rapid succession. Then he called everything off until Monday.

"In view of the turn that this matter has taken ... it might be just as well to allow the defence to consider their position over the weekend," he said.

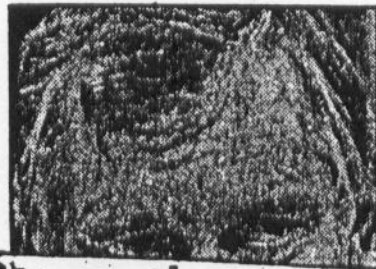
But even as Judge Montgomery made his scheduling intentions known, Mr. Kopyto said that courts in the United States would give him the latitude to act as co-counsel.

Outside the courtroom, Mr. Kopyto said the problems had arisen because of a misunderstanding over the judge's intentions. He said further submissions will be made Monday to allow him to don a lawyer's gown to question Mr. Scott.

"I think history has meant for us to be able to question Mr. Scott about these matters."

Those matters are Mr. Scott's knowledge of factors that led to Kopyto facing the offence of scandalizing the court for commenting in an interview with The Globe and Mail.

Mr. Kopyto had strenuously criticized as "a mockery of justice" a court ruling dismissing a civil case in which he had sought to make former RCMP officers pay for disrupting a leftist organization.



Story that quoted Kopyto routine, reporter testifies

OCTOBER 2 1986

BY DREW FAGAN

The Globe and Mail

A story in The Globe and Mail that may lead to Toronto lawyer Harry Kopyto being found in contempt of court was merely a run-of-the-mill article in a reporter's daily coverage of legal issues, the Ontario Supreme Court has heard.

Globe reporter Kirk Makin testified yesterday that at the time of publication in December, the article was "not a particularly crucial story: ... It wouldn't stand out for any particular reason."

Mr. Makin testified the story was

attributed to Mr. Kopyto, "we calculated to scandalize the court and to bring the administration of justice into disrepute."

After seven days of pre-trial legal motions launched by the defence, Crown attorney Dean Paquet opened and closed his case with Mr. Makin's one-hour testimony.

The interview with Mr. Kopyto before the story was written was long one, and Mr. Makin read his notes to the court.

Only a small number of those comments were quoted in the article, but Mr. Makin testified that the

Defend free speech!

Contact us; we need your help!

The Harry Kopyto Defence Committee has been formed to:

1. acquaint as many persons as possible with the facts of the legal prosecution that has been launched by the Ontario justice system against him and the cause of justice;
2. to build broad community pressure to get the charges dropped; and
3. to raise the necessary funds to guarantee the most effective defence of his rights as possible.

We need your financial support to help meet our goal of \$50,000 to defray the legal costs of the defence—actually a modest sum considering that we are required to defend Kopyto in three separate cases against institutions having unlimited access to public funds and which will undoubtedly appeal any and every defeat. We are planning media conferences, rallies, presentations of briefs and petitions. This will require your time and energy to contact others and get such activities underway to ensure that justice is done.

- ☐ Add my name as an endorser of the Defence Committee and its aims.
- ☐ Enclosed please find my contribution to assist with the legal defence, payable to the **Harry Kopyto Defence Fund**, c/o Iler, Campbell & Associates, Barristers and Solicitors, 136 Simcoe Street, Ste. 201, Toronto, Ontario M5H 3G4.

Name _____

Address _____

City/Prov. _____

Postal Code _____ Phone _____

THE HARRY KOPYTO DEFENCE COMMITTEE
372 Bay St., Ste. 1708, Toronto, Ont. M5H 2W9

Telephone: (416) 361-5885

Drop the charges!

THE TORONTO STAR

Editorial

Monday, October 20, 1986

A scandalous law

Ontario Supreme Court Justice Robert Montgomery has declared lawyer Harry Kopyto a criminal for publicly criticizing the judiciary, a decision that points out the need to remove from judges the power to punish persons for "scandalizing the court."

Kopyto was prosecuted by the provincial attorney-general's ministry for remarks he made to a newspaper reporter after losing a case in small claims court. His client had claimed damages against the Royal Canadian Mounted Police for disrupting a left-wing organization in 1972.

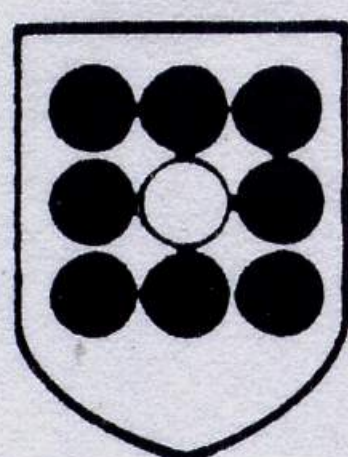
He was quoted as saying that the judge's ruling "stinks to high hell" and that "the courts and the RCMP are sticking so close together you'd think they were put together with Krazy Glue."

Montgomery ruled that the comments were in contempt of court, saying "This is a blatant attack on all judges and all courts." He can now jail Kopyto for up to six months.

Montgomery's decision has focused attention on a law that restricts citizens — lawyers and non-lawyers alike — from talking openly about the judicial system, one of democracy's most fundamental institutions. The law is so vague it does not even define "contempt." And it prevents an accused person from answering the charge, as the courts have ruled that truth is not a defence. The law effectively allows judges to bash anyone who speaks out about the system.

One is left wondering how the administration of justice could possibly have been harmed by Kopyto comments. He had argued, not unsensibly, that a typical reader would conclude, "that is one angry lawyer;" more thoughtful readers might be concerned whether justice had been done in the small claims court case; some might consider the relationship between the courts and the police; and there may have even have been a few chuckles over his use of the phrase "Krazy Glue."

The fact that our courts do not appear strong and confident enough to bear this criticism is all the more reason for Parliament to remove the law from the Criminal Code.



CCLA NEWS NOTES

229 YONGE STREET, SUITE 403

TORONTO, ONTARIO M5B 1N9

TELEPHONE (416) 363-0321

November 1986

The following is a statement made by the Canadian Civil Liberties Association in response to a recent contempt of court conviction and sentence imposed upon Toronto lawyer Harry Kopyto. CCLA will attempt to intervene in the appeal in order to argue that the law violates the Charter protection for freedom of expression. CCLA also plans, in the company of representatives from other constituencies, to petition the Government of Canada to change the law.

In order to finance these actions and other free speech causes, the organization has established a special project fund. CCLA supporters are asked to contribute generously. Please make cheques payable to the CCLA Free Speech Fund and send in the enclosed postage-paid reply envelope. For our records, please tear off and include your mailing label.

STATEMENT ON KOPYTO CONTEMPT CONVICTION

Toronto lawyer Harry Kopyto has been banished from appearing in the Ontario courts until he apologizes for telling a Globe and Mail reporter that the courts "are warped in favour of protecting the police".

Despite what we may think about Mr. Kopyto's remarks, we are positively outraged that it's a crime for him to express them. Nor do we understand how the administration of justice is supposed to benefit from this assault on Mr. Kopyto's livelihood unless he participates in the fraudulent ritual of a public apology.

The issue is freedom of expression. In a democracy, there must be a right to speak harshly as well as nicely. Of course, the courts have been quick to assure us that it's permissible to criticize the courts. But such criticisms must avoid invective and the imputation of bias.

Freedom of speech, however, cannot viably co-exist with such a demanding obligation to bite your tongue. In any event, as York University President Harry Arthurs once observed, "unless you assume that judges can't be biased or venal, there must be a right to say so".

Unfortunately, the Kopyto case is not an isolated one. A few years ago, a Maritime university student went to jail for writing in a campus publication that a particular trial was "a mockery of justice" and that the courts were "instruments of the corporate elite". And there are many other examples.

Whatever might have motivated the old common law to conceive this offence of "scandalizing" the judges and the courts, it has no place in a modern democracy. The reputation of the administration of justice is not so fragile. Since the Charter has propelled the courts to the centre of so many social controversies, elementary fairness requires that the courts not be immunized in this way from public criticism.

Moreover, it is simply not possible for highly trained lawyers, let alone untrained non-lawyers, to discern the boundaries of permissible criticism. In the result, there is too great a risk that the fall-out from the Kopyto case will cause people to censor themselves out of the fear that they too will be charged.

Accordingly, the Canadian Civil Liberties Association calls upon the Government of Canada to remove this anachronism from the criminal law of this country. It is not right to wait for lengthy and expensive appeals to run their course. That will exact too great a toll in time, money, and anxiety. In our opinion, there is a need for immediate action by the Parliament of Canada.

KOPYTO HAS BEEN DECLARED GUILTY
KOPYTO HAS BEEN DECLARED GUILTY

Mr. Kopyto's offence

The force of a repressive law is being applied to Toronto lawyer Harry Kopyto to persuade him to apologize for intemperate remarks he made last December about the courts. Who is served by this action?

Mr. Kopyto was convicted on Oct. 17 of scandalizing the court — a form of contempt of court — for saying that an Ontario judge's decision had been a mockery of justice and that the courts in Canada "are warped in favor of protecting the police." The possible sentences included a fine and a jail sentence; instead, Mr. Justice Robert Montgomery of the Ontario Supreme Court has ordered Mr. Kopyto to make an "unequivocal and unreserved" apology to all Ontario judges, in particular the one whose decision he attacked. Until he does so, he will be unable to practice law in any court in Ontario.

The sentence will be particularly painful for Mr. Kopyto, who is unwilling to apologize for remarks he believed and, during the trial, tried to defend as true. But any sentence for this law is too harsh, because the law itself should not exist. Judge Montgomery, in trying Mr. Kopyto, dismissed attempts by his defence counsel to call evidence that his remarks were true because, the judge ruled, it would turn the proceeding into a circus and "would not be for the public good." In fact, the law itself is contrary to the public good.

The central conceit of this offence, based in common law, is that the justice system is too fragile to allow individuals to make accusatory or damning remarks about it. Public confidence in the administration of justice would be weakened, the reasoning goes, by comments that "the courts and the RCMP are sticking so close together you'd think they were put together with Crazy Glue" (Mr. Kopyto again).

Our view is that there are times when public confidence should be shaken, and that the

test of contentious remarks such as Mr. Kopyto's should be their ability to stand up in open debate. The public interest will be far better served by respected lawyers and others challenging Mr. Kopyto's assertions than by using the weight of law to silence him. Argument is persuasive; repression breeds only mistrust and rumor. If Mr. Kopyto were to make an unequivocal apology on pain of losing his livelihood, the only thing it would prove is that the justice system has the power to force people to bend to its will. The substance of the lawyer's remarks last December would remain hanging like an unanswered question.

Once the state gets into the business of punishing people for their opinions, where does it stop? Consider Michael Mandel, a professor at Osgoode Hall Law School, who was quoted in yesterday's paper as saying, "No one with any brains would deny that the courts have been biased in this affair (the courts' dealings with the RCMP) in favor of the police." Will the Attorney-General now serve Mr. Mandel with a writ for scandalizing the court — for leaning against the pillars of the justice system and causing them to totter? Where does this attempt to suppress free speech end?

No freedom is absolute; we have laws of libel to address injuries to personal reputations, and laws against inciting people to commit crimes. Under the heading of contempt of court, we have laws (again, based in common law) to restrain those who would obstruct justice, disrupt the courtroom, disobey a court order or attempt to influence the outcome of a trial. But the offence of scandalizing the court is different. The justice system would be better off without the protection this law purports to give, which is protection against people speaking their minds.

Mr. Kopyto should not have been charged. His case should be the last under this scandalous law.

The Globe and Mail

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FRIDAY, NOVEMBER 7, 1986

The subject who is truly loyal to the Chief Magistrate will neither advise nor submit to arbitrary measures. JUNIUS



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Kopyto case seen as blot on Scott's rights record

by DREW FAGAN
The Globe and Mail

Being publicly skewered by the under of Amnesty International not the way Ontario Attorney-General Ian Scott had expected the evening to proceed.

Sitting on the dais at a Toronto fund-raising dinner to mark the 10th anniversary of the worldwide human rights organization, Mr. Scott had just spoken about his work writing letters on behalf of those imprisoned for their beliefs. Then it was Peter Benenson's turn. It did not take long for Amnesty's original voice to turn attention to a trial that some saw as a blot on Mr. Scott's reputation as a civil libertarian — the prosecution of Toronto lawyer Harry Kopyto.

One need look no further than Canada to see that freedom requires constant vigilance, Mr. Benenson said.

While he never mentioned Mr. Kopyto by name, he quoted from a judgment in the case.

The judge's reasoning is exactly the type of justification used by officials in the Soviet Union to trail freedom of speech by imprisoning dissidents, Mr. Benenson continued.

In a telephone interview from London yesterday, he said many lawyers later thanked him for referring to the Kopyto case.

"I think what is happening is amazing. The whole story seems amazing."



Harry Kopyto

and it wouldn't have made any difference," he said in an interview about his trial.

"The fact that I was found guilty does tend to prove the point I was trying to make, which is that I touched a raw nerve when criticized the judicial system and having institutional bias in favor of the government."

Courtroom observers shook their heads at Mr. Kopyto's lack of decorum. One lawyer knowledgeable about the case said afterward that the outburst was precisely why he did not want to be arguing in court. "You can't



Attorney-General Ian Scott

Attorney-general faces job burnout close friends fear Kopyto seeks nomination DECEMBER 24, 1986 in new riding

BY MARY GOODERHAM
The Globe and Mail

Outspoken civil-rights lawyer Harry Kopyto will seek the provincial New Democratic Party nomination in Toronto's new St. George-St. David riding, and will face off against Attorney-General Ian Scott if chosen at next month's nomination meeting.

ed a number of issues for the government, including the task force of Rev. Sean O'Sullivan on nursing homes, the Zuber Commission on Ontario's court structure, Dr. Henry Morgentaler's abortion clinic and drunk driving laws.

Other issues cover legal aid fees, a pay dispute with crown attorneys, legislation to revoke the Queen's Counsel title from lawyers, a \$5.4 million program to crack down on wife beaters, a bill to resolve commercial disputes settled by arbitration outside Canada, compensation to crime victims and a contempt-of-court charge against Toronto lawyer Harry Kopyto.

by Nick Marchese
and Ena Chadha

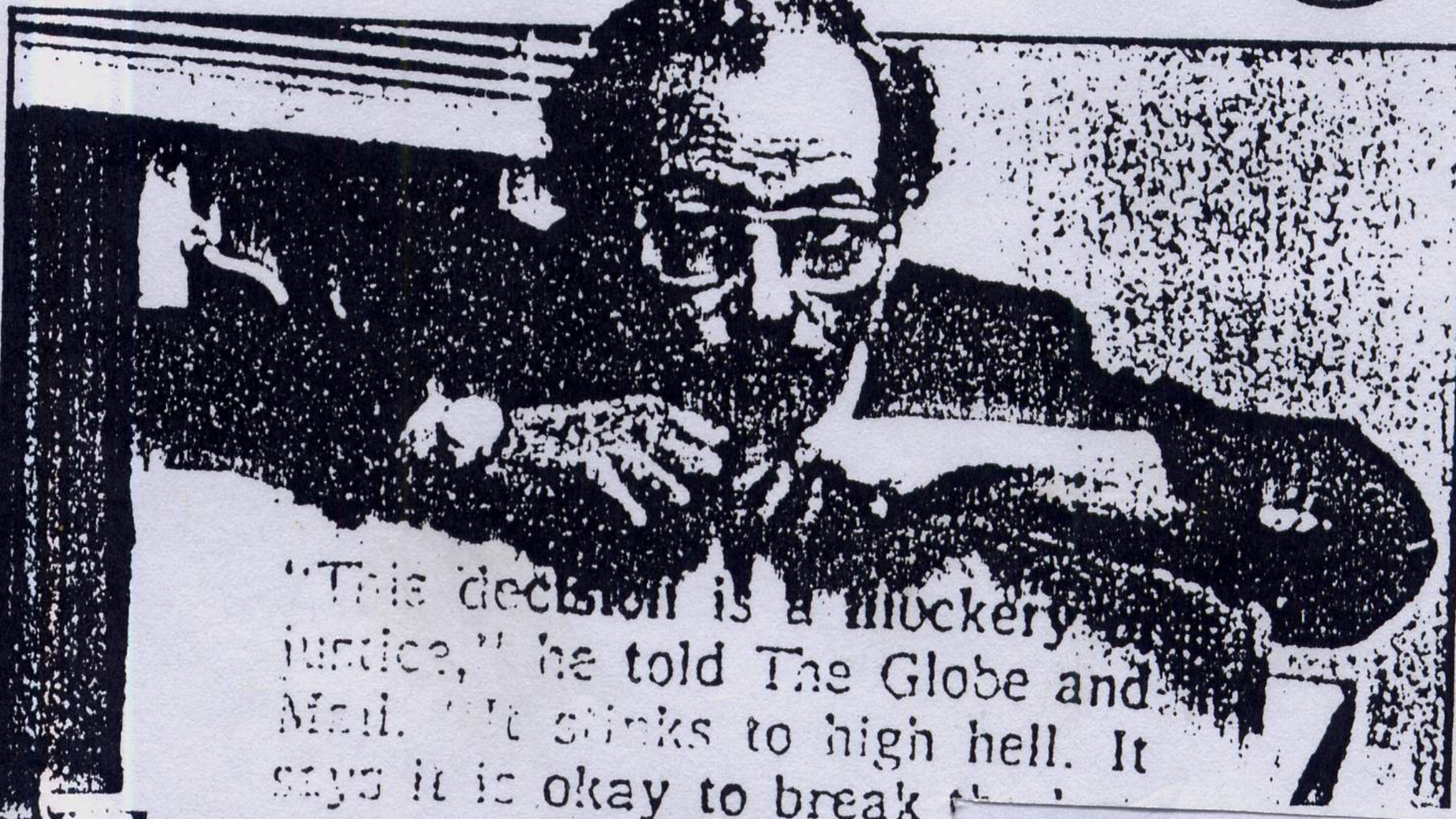
Toronto criminal and civil rights lawyer Harry Kopyto is at the centre of a serious challenge to the administration of justice in Canada.

Mr. Justice Robert Montgomery of the Ontario Supreme Court convicted Kopyto Oct. 17 of "scandalizing the court" — a form of contempt — for criticisms he made of the judge's decision in a civil suit last December (see photo).

Kopyto made the comments after losing a final bid to have two RCMP officers compensate his client, Ross Dowson, for alleged slander and "dirty tricks" against Dowson's former organization, the League for Socialist Action.

It all started in December of 1977 when Dowson launched a suit against the RCMP for slander and disruptive practices. This was a federal court case for \$500,000. In March of 1979 RCMP officials admitted before a Royal Commission of Inquiry

KOPYTO



"This decision is a mockery of justice," he told The Globe and Mail. "It stinks to high hell. It says it is okay to break

Court of Appeal to ask for a stay of execution of the sentence the week of Nov. 17.

He also faces charges of "unprofessional conduct" from the Law Society of Upper Canada, the official governing body for lawyers, as a result of his remarks and his conviction.

Despite the ruling, Kopyto has already been able to make his way back into the courtroom, albeit in a limited way.

The day after the sentencing Kopyto was in a Brampton court representing one of 16 people facing drug conspiracy charges. Kopyto told the judge "my client doesn't want anyone else to represent him." Judge Gerry Young and the other lawyers agreed to let him stay, on the condition that he couldn't cross-examine witnesses.

Editorials in the Toronto Star and the Globe and Mail have questioned the adequacy of the justice system if it cannot sustain criticism from either lawyers or citizens.

Even himself has been one of the

→ p. 2

From p. 1

September 19, 1986

COMMONS DEBATES

Lawyers Police agent of Mounties also worked

By Chris Welner (Toronto Star)

Toronto lawyer Harry Kopyto is gathering high-powered support in his fight to have the federal government investigate charges that the RCMP planted a spy in his office.

With the Criminal Lawyers' Association leading the charge, the Law Union of Ontario, the Canadian Civil Liberties Association, Kopyto's law partners and noted criminal defence lawyer Edward Greenspan added their signatures yesterday to the list of those asking federal Solicitor-

for defence

BY THOMAS CLARIDGE
(The Globe and Mail)

A Crown witness in a drug-trafficking trial admitted yesterday that he worked on both sides of the case.

Gordon Frith, 37, told District Court Judge Stephen Borins that as a paid agent of the Royal Canadian Mounted Police, he arranged to buy cocaine from 39-year-old James Pitard and kept police posted on

that matters, but, rather, his conviction under this archaic and dangerous law.

RCM Mr. Robinson: Mr. Speaker, the law in question denies the defence of truth. It is a clear violation of Harry Kopyto's right to freedom of speech as guaranteed by the Charter of Rights. But Harry Kopyto should have been the last person charged under this repressive law.

Some Hon. Members: Order! Order!

Mr. Robinson: To this end, I plan to introduce a Private Members' Bill to repeal this offence in the Criminal Code. As well, I call upon the federal Attorney General (Mr. Hnatyshyn) to grant immediately a full pardon and vacate the conviction of Harry Kopyto who has so courageously fought this battle against this unjust law on behalf of all Canadians.

Attorney-General said to have backed accused

By Darcy Henton Toronto Star

Ontario's Attorney-General once championed the cause of a Metro lawyer he has since charged with contempt of court, the Ontario Supreme Court has been told.

Ian Scott, then a civil liberties lawyer, supported Harry Kopyto in his lengthy battle to convince the courts to allow charges to be laid against policemen involved in alleged Royal Canadian Mounted Police dirty tricks, court heard yesterday.

Kopyto, 39, is on trial for making statements "calculated to scandalize the court" and accused of calling a decision of civil court judge Marvin Zuker "a mockery of justice" which "stinks to high heaven."

The remarks came after he failed to have charges laid

against the policemen and a related civil case against them was dismissed last December.

A notice of motion, signed by acting Deputy Attorney-General R.F. Chaloner, accuses him of telling a reporter that Canadian courts are "warped in favor of protecting the police. The courts and the RCMP are sticking so close together you'd think they were put together with Krazy Glue."

The case, believed to be the first in the country in which a lawyer has been accused of scandalizing the court, attracted nearly 100 onlookers for the first day of a scheduled five-day trial yesterday.

Kopyto told Ontario Supreme Court Justice Robert Montgomery that Scott, whom he has subpoenaed as a defence witness,

once argued in support of his case in the Ontario Court of Appeal. Scott also led a delegation in 1980 to then Attorney-General Roy McMurtry to urge him to withdraw an action that prevented Kopyto's client, Ross Dowson, from charging the policemen involved, he said.

Kopyto said Scott told McMurtry that "large sectors of the country could well come to believe there are double standards in this country."

Clay Powell, a lawyer representing Scott, an appeal court judge and a justice of the peace subpoenaed by Kopyto's lawyers, questioned the need for the three men to be called. He said the men need not testify if materials can be provided to meet the needs of the court.

Kopyto's wife, two children and

many of his former clients and colleagues packed the courtroom to hear a number of pre-trial legal arguments challenging the jurisdiction of the court and trial judge to hear the case.

Justice Montgomery rejected an argument from James Lockyer — one of six solicitors representing Kopyto — that no court has jurisdiction to try the accused.

He also rejected a motion that he disqualify himself from the case because of bias against Kopyto.

Lockyer argued that Kopyto's alleged comments were directed at the justice system in general — rather than a specific court — and as a result, no court could be considered impartial.

He argued that no court can rule without bias on the truth of Kopyto's alleged remarks.

Sept 23/86

December 30, 1986

Harry Kopyto
194 Pinewood Avenue
Toronto, Ontario
work: 361-1404
home: 656-6709

Dear Fellow New Democrat:

On Tuesday, January 6th, I will be placing my name in nomination as our party's candidate for the riding of St. George-St. David in the coming provincial election. I am looking forward to meeting you at this crucial meeting and discussing your ideas as to how we can most effectively advance our party and take advantage of every opening in this new riding to make an NDP victory a real possibility.

While I am not now a member of St. George-St. David, I presently reside in the Oakwood riding, and have been an activist and member of the party in the Toronto area since the party was founded in 1961. I have attended almost every convention of the party, both federal and provincial, since then and have run as an official candidate twice in Board of Education elections and have served on riding positions for most of those years.

At the same time, I have had the opportunity, in my work as a lawyer, which provides me and my family with a living, to also fight in the Courts for the rights of working people.

Though I may be a stranger to the riding association itself, I am not a stranger to the struggles of those who reside in it. For fifteen years, I have fought for the human and civil rights of women, blacks, handicapped people, victims of police brutality, prisoners and other minorities. As an example of my involvement and interest in the riding, I currently represent over 100 public housing tenants at 200 Wellesley Street East in the largest rent rebate suit ever launched. I represented John Damien, the first gay person in Canada to sue for discrimination on grounds of sexual orientation.

Many of you will know that I am now in a major legal and political fight with Liberal MP Ian Scott of the defunct seat of St. David, who is now attempting to upstage Tory MPP Susan Fish of the defunct seat of St. George by trying to present himself as the sitting member of the new riding, St. George-St. David, which will only appear on the lists for the first time this upcoming election.

Scott, in his capacity as the Liberal government's Attorney General, has cited me for "scandalizing the court" for my statement in the course of a press interview that the courts "are warped in favour of protecting the police." My statement followed the court's dismissal of a legal suit initiated by a St. George member on the grounds that the RCMP in its campaign of dirty tricks against persons and organizations of dissident opinion in the 70's was only carrying out orders. This charge has aroused widespread protest from across the country, including the editors of all three Toronto dailies.

I have been barred by a court decision, now under appeal, from practicing in Ontario's courts until I apologize. This outrageous judgment, resulting from Mr. Scott's decision to prosecute me, has proven to be one of his most unpopular political acts.

If I am chosen by the January 6 meeting to be the official St. George-St. David NDP candidate, my campaign will be waged on the full program of the party against the escalating and perilous arms drive and the ominous plant closures resulting in mounting unemployment.

My campaign will be against both the Tory government in Ottawa and the Liberals in Toronto. It will inevitably be given a high profile as a human and civil rights contest with the Liberal party's Attorney General Ian Scott and is certain to be the focus of considerable attention. It could become the most exciting and significant campaign in the entire election, making deep inroads into both Liberal and Tory support and laying a wide and firm base under the St. George-St. David party. This is why I urge you to come to the nomination meeting on Tuesday, January 6, 7:30 p.m. at 519 Church Street.

In solidarity,

Harry Kopyto
Harry Kopyto



The following is a statement made by the Canadian Civil Liberties Association in response to a recent contempt of court conviction and sentence imposed upon Toronto lawyer Harry Kopyto. CCLA will attempt to intervene in the appeal in order to argue that the law violates the Charter protection for freedom of expression. CCLA also plans, in the company of representatives from other constituencies, to petition the Government of Canada to change the law.

Writers fear for free speech

Nov-12/86 Toronto Sun

By CLAIRE BICKLEY
Staff Writer

Lawyer Harry Kopyto's conviction shatters the belief that free speech can't draw persecution in Canada, author Margaret Atwood said yesterday.

Kopyto was convicted of scandalizing the court for saying it is warped in favor of protecting the police. This "reeks a bit too much to me of what happens in totalitarian countries... where you can't say what you think and truth is not a defence," Atwood said.

Atwood was interviewed after a press conference to mark Nov. 15 as International Writers in Prison Day.

KOPYTO C... TEMPT CONVICTION

Lawyers back Kopyto
as he appeals
NOVEMBER 6 1986

Two judges decline to sit on Kopyto

BY DREW FAGAN
The Globe and Mail

Two judges of the Ontario Court of Appeal have decided not to sit on the five-judge panel that will hear the appeal of the contempt-of-court conviction of Toronto civil rights lawyer Harry Kopyto.

Mr. Kopyto had sought to have the two judges — Mr. Justice Maurice Lacourciere and Mr. Justice Arthur Martin — replaced because they had ruled against him at one stage of his long court fight against the Royal Canadian Mounted Police that ultimately led to his contempt citation.

In a letter to Mr. Kopyto this week, W. F. Shaughnessy, the registrar of the Ontario Supreme Court, said that while the two judges did not feel their previous decision created a reasonable apprehension of bias, "in view of your objection, they do not wish to sit on your appeal and have declined to do so."

In 1980, Roy McMurtry, then Ontario attorney-general, halted efforts by one of Mr. Kopyto's clients to have charges laid against two RCMP officers involved in dirty tricks.

That ruling was fought in the courts, but a three-judge panel of the Ontario Court of Appeal, including Judge Lacourciere and Judge Martin, upheld Mr. McMurtry's decision.

Lawyers speak out: Civil rights lawyer Harry Kopyto later tried to obtain with his counsel Charles Roach, said yesterday he is prepared to go to jail to defend the rights of Canadians to free speech.

redress against the RCMP through civil action. Comments after he was unsuccessful in that effort led to the contempt case in which he was sentenced to apologize or be barred from practicing in Ontario courts.

The judge who heard the contempt trial, Mr. Justice Robert Montgomery, had also upheld Mr.

McMurtry's decision before the matter went to the appeal court.

At the beginning of Mr. Kopyto's trial, his lawyers sought to have Judge Montgomery disqualified himself because of his previous decision and the resulting concern at possible bias. Judge Montgomery refused.

... effect of a prosecution like is to (dissuade) people from speaking freely," said Clay Ruby, a Toronto lawyer. "It's not really an issue of what lawyers are allowed to say or not. The issue is, how is the public to know what goes on in their courts."

Lawyer Clay Ruby, speaking in support of lawyer Harry Kopyto, barred from appearing in court until he apologizes for contempt of court. NOVEMBER 9, 1986. Other plea for a downtown Toronto house this morning before his sentence is meted out by Mr. Justice Robert Montgomery of the Ontario Supreme Court. "This is the best movement."

Embattled Kopyto

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from p. 1 - Jan/87

to go to jail to defend the rights of Canadians to free speech.

Lawyers show support as colleague faces jail

By Janice Turner
Toronto Star

Colorful civil rights lawyer Harry Kopyto said he would be "proud" to go to jail to defend

Court ruled that Kopyto's criticism of a lower judge's decision last December was "a blatant attack on all judges and all courts."

BY DREW FAGAN
The Globe and Mail

Toronto lawyer Harry Kopyto has lost another court tangle with the Public Authorities Protection Act.

When a provincial court judge ruled last December that the legislation gave protection to two RCMP officers involved in dirty tricks, Mr. Kopyto's outrage led to a citation for contempt of court.

Days after his conviction last month for scandalizing the court, he launched a constitutional challenge of the bill's provision denying legal recourse against public officials unless actions are commenced within six months.

Embattled Kopyto loses another fight

the plaintiff of equal benefit of the law," Judge Steele ruled.

"All plaintiffs have the same benefit of the law. . . . The only difference is whether or not the defendant was acting in a public duty. This is not discrimination."

Mr. Kopyto commented in an interview that the ruling is an extremely narrow interpretation of the anti-discrimination section of the Charter.

"It boggles the mind. . . . It is a black day for those who believed that the Charter could be used to eliminate discriminatory legislation."

The case involved Mehran Mirhadizadeh, who was attacked by fellow inmates at the Toronto

A6/ THE TORONTO STAR, WEDNESDAY, DECEMBER 24, 1986 ★

Kopyto seeks NDP nomination

By Rosie DiManno Toronto Star

Firebrand lawyer Harry Kopyto says he will contest the NDP nomination in the riding of St. David.

If he wins the candidacy at the nomination meeting next month, Kopyto will find himself going head to head against his legal nemesis, Attorney-General Ian Scott, in the next provincial election.

Active with the NDP party (and its predecessor, the CCF) since 1959, Kopyto said he is anxious to do battle with Scott — the Liberal MPP for the St. David riding — "because we have certain outstanding differences."

In October, Kopyto was convicted of contempt of court for saying the courts and the Royal Canadian Mounted Police "are sticking so close together you'd think they were put together with Crazy Glue."

The comment was made after

Provincial Court Judge Marvin Zuker dismissed a civil suit brought by Kopyto on behalf of writer and politician Ross Dowson.

In passing sentence, Mr. Justice Robert Montgomery of the Ontario Supreme Court had Kopyto barred from appearing in the Supreme Court, District Courts and Provincial Courts across the province as a result of his remarks.

Before the ban could be lifted, Kopyto had to apologize to the courts. But Kopyto returned to regular legal business Nov. 19 when the Ontario Court of Appeal stayed the ban pending a full appeal.

Earlier this month, the Criminal Lawyers' Association petitioned Scott and federal Solicitor-General James Kelleher to authorize a government probe into charges that the RCMP planted a spy in Kopyto's office.



Kopyto

Harry Kopyto Defence Committee

372 Bay Street, Suite 1708

Toronto, Ontario M5H 2W9 (416) 361-1404

January 1987



Dear Friend:

On March 9, the Ontario Court of Appeal will decide whether the law of "scandalizing the court" is unconstitutional OR whether Harry Kopyto will be barred from appearing in Ontario's courts. The appeal is against a decision of Supreme Court Judge Montgomery rendered last fall which found Harry Kopyto guilty of contempt for telling a newspaper reporter after an eight year struggle to bring confessed RCMP wrongdoers to justice that "the courts were warped in favour of protecting the police". Kopyto was barred by the judgments from appearing in Ontario's courts pending an unreserved apology which he has vowed never to make.

The appeal to be heard by five judges of Ontario's highest court, holds forth the possibility of finally doing away with an unpopular, archaic and vague law which has been used to silence legitimate criticism of the judicial system. It opens new horizons in a key struggle for free speech. It raises to a new level a battle which has already attracted national attention and support.

However, the cost of justice is high. Transcripts and related disbursements amount to approximately \$3,000.00 and additional \$4,500.00 is need to defray past and future legal fees for Harry Kopyto's team of lawyers, who include Charles Roach and Angie Codina, and who are working at highly reduced rates.

We need your help to pay these expenses. The government has unlimited funds and has assigned senior counsel in the Attorney General's department to insure their arguments are well prepared and presented. We need to match their efforts. We need to raise \$7,500.00 by March 1, 1987.

The defence of freedom of speech is too important to be left to one person. For Harry Kopyto, the cost of defending freedom of speech could be his career. The rest of us do not have to make such a sacrifice. However, your financial contribution will help him bear the burden of his defence and could result in the elimination of a law which does not exist in its Canadian form anywhere else in the world and which clearly is open to abuse. Please give what you can.

Yours sincerely,

Maureen Malmud
Maureen Malmud

Send contribution payable to:
Harry Kopyto Defence Fund
c/o Ilar, Campbell & Associates
Barristers and Solicitors
136 Simcoe St., Suite 201
Toronto, Ontario M5H 3G4

A SOCIALIST
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CANADIAN

MARCH 1987
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DIMENSION

THE TRIALS OF HARRY KOPYTO

Marion Cohen

SOUTH KOREA'S OLYMPIC POWDERKEG

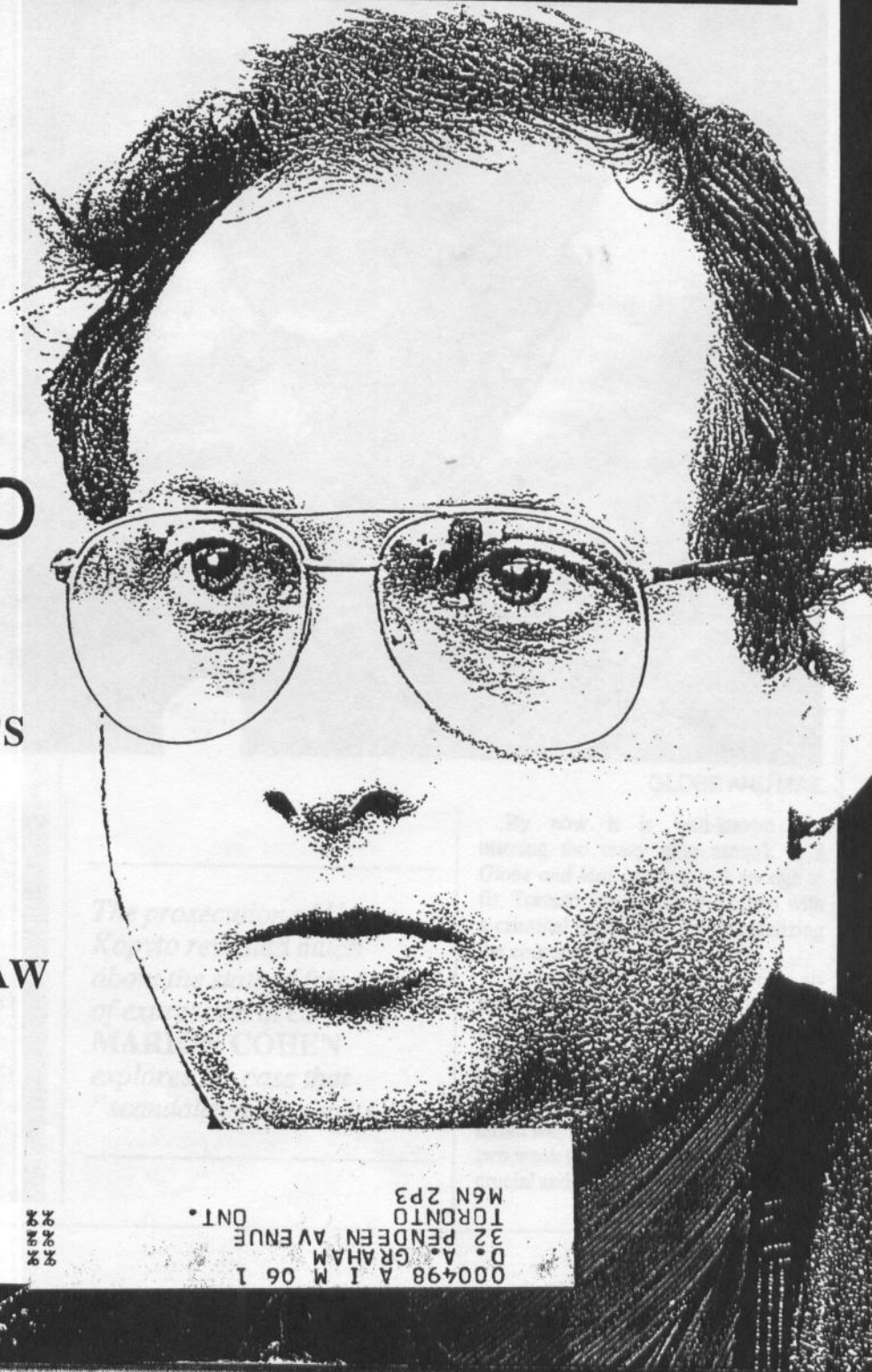
Bruce Kidd

ONTARIO'S PAY EQUITY LAW

Isa Bakker

HOLLYWOOD'S ARABS

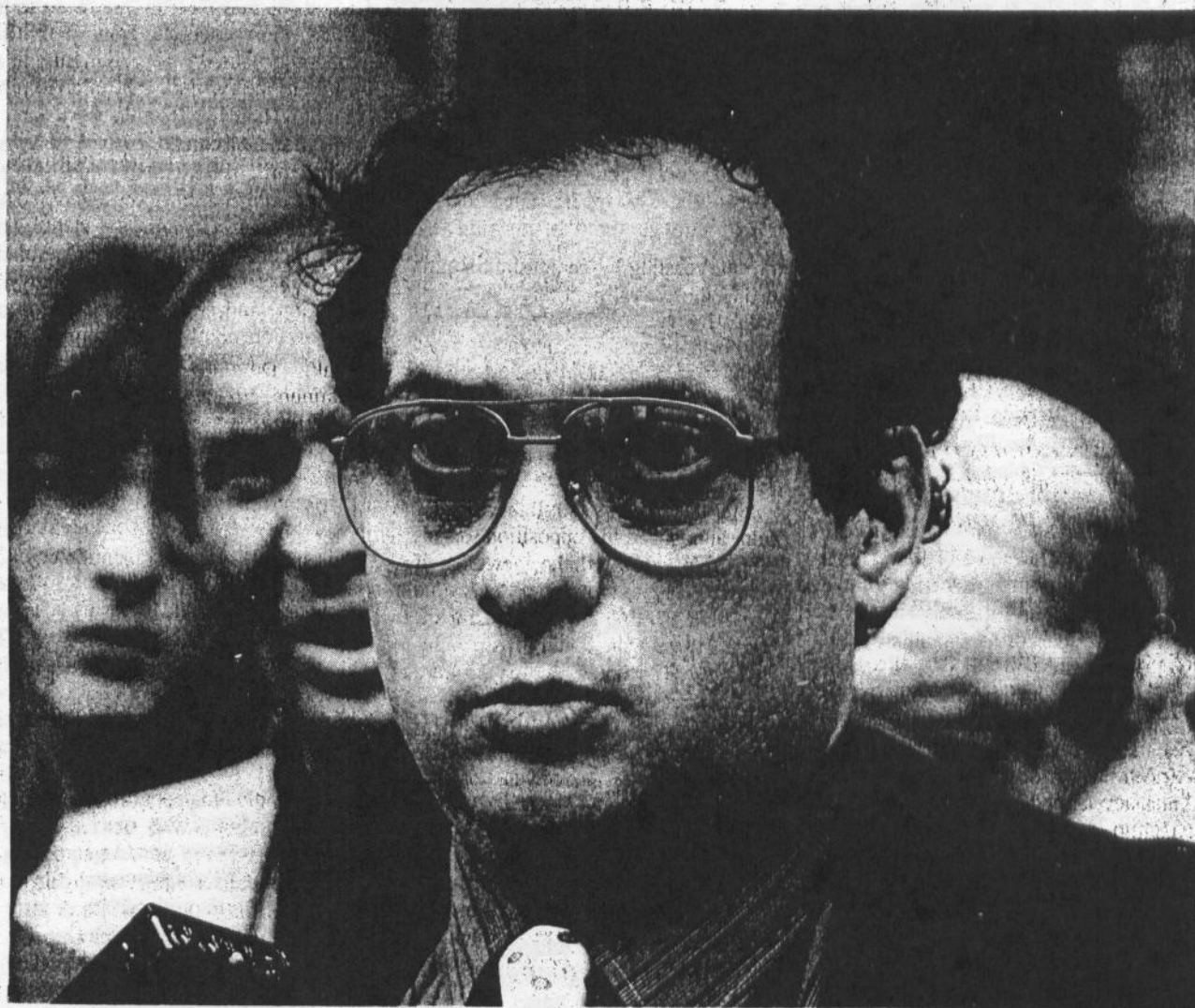
Jack Shaheen



000498 A I M 06 1
D. A. GRAHAM
32 PENDEN AVENUE
TORONTO
M6N 2P3
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THE TRIALS OF HARRY KOPYTO



GLOBE AND MAIL

"This decision is a mockery of justice. It stinks to high hell ... The courts and the RCMP are sticking so close together you'd think they were put together with Krazy Glue."

The prosecution of Harry Kopyto revealed much about the state of freedom of expression in Canada.
MARION COHEN
explores the case that "scandalized the courts."

By now it is well-known that uttering the crazy glue remark to a *Globe and Mail* reporter was enough to fix Toronto lawyer Harry Kopyto with a criminal conviction for scandalizing the courts of Ontario.

There are many reasons the case attracted such wide-spread public attention. In part because the prosecution was so clearly an error for Ontario's newly-elected Attorney General Ian Scott, whose reputation as a civil libertarian was tarnished. In part because the two week trial, which focussed on such crucial and fundamental questions about

the right of free speech in Canada, also threatened constantly to slide into pure burlesque. In part also because the case constituted such an ironic epilogue to the history of RCMP dirty tricks in the 70's.

But despite some absurd moments, and the fact that Kopyto's fate was to some degree determined by his own ascending egomania, the trial of Harry Kopyto deserved the attention it received because of what the prosecution revealed about the state of freedom of expression in Canada.

First, though, it is worth taking a quick look at the history which thrust Kopyto into the happy role of having himself as a client in this not inconsequential skirmish with the administration of justice.

The journey that led Kopyto to his face-off with Ian Scott in the Supreme Court of Ontario is an interesting one. In 1972 Ross Dowson and John Ridell were vying for the leadership of the Trotskyist League for Socialist Action (L.S.A.). As part of a campaign of surveillance and disruption of left groups in the early seventies, the RCMP circulated several unsigned letters among members of the LSA, alleging that Ridell was suffering from severe emotional anxiety and instability and had sought psychiatric treatment.

The letter-writing incident came to light in 1979 when an RCMP security service officer admitted to the Krever royal commission on the confidentiality of health records that the letters were written and distributed as part of an attempt by the RCMP to disrupt the LSA.

Dowson was later to maintain that the tactic had its intended effect. Although the letters were recognized as the work of the RCMP, Dowson claimed that fears that the L.S.A. had been infiltrated led to its eventual collapse. Harry Kopyto was Ross Dowson's lawyer.

Roy McMurtry, the Attorney-General at the time, responded to the revelations by ordering an investigation by the Ontario Provincial Police. But there was reason to doubt the sincerity of McMurtry's desire to expose RCMP misconduct or to prosecute its per-

petrators. By the spring of 1979 McMurtry was already well aware that the RCMP had extended its police tentacles into the democratic life of the province. In 1977, in response to a question raised in the Ontario legislature by the NDP leader Stephen Lewis, McMurtry had tabled a report acknowledging that the RCMP had investigated members of the New Democratic Party in the early 70's. The report stated that the NDP, through the Waffle wing, had been penetrated by "subversive elements", including members of the LSA. McMurtry stated at that time that he did not intend to take any action about the investigation unless requested by the party, and that his only concern would be whether laws were broken by the RCMP.

Operation Checkmate disrupted individuals and groups between 1972 and 1974.

However, even this narrow view of appropriate police behavior in a democracy was belied by McMurtry's subsequent behavior. The OPP investigation became the pretext which enabled McMurtry to prevent criminal charges being laid against the police officers responsible for writing and distributing the Ridell letters.

Further revelations about RCMP disruption of the LSA emerged at the McDonald Commission inquiry into RCMP Activities, established by the Liberal government in 1979. Evidence received by the Commission indicated that in 1970 a special operations group had been established within the RCMP. Between 1972 and 1974, under the code name Operations Checkmate, the special operations group conceived and implemented a number of disruptive measures directed against individuals and groups. The McDonald Commission found that the "... disruptive

measures were designed specifically to create confusion within the ranks of target organizations by discrediting their leadership and their programs so as to divert their energies from activities affecting others in the community as a whole to the resolution of internal problems." The Riddell letters were part of Operation Checkmate.

In April, 1980, edited transcripts of the in-camera hearings were released by the McDonald Commission identifying the officers responsible for Operation Checkmate. Accompanied by lawyer Paul Copeland, (who represented Praxis Corporation, another left group targeted by the RCMP), Dowson and Riddell attended before a Justice of the Peace in Toronto to lay charges against the senior RCMP officers named, Stanley Chisholm and Ronald Yaworski.

Dowson, Ridell and Praxis wanted to have the RCMP officers charged with forgery, uttering and other criminal offences. The Justice of the Peace decided to hold a hearing to determine whether the charges should be laid. But McMurtry's law officers intervened. McMurtry's counsel persuaded the Justice of the Peace to adjourn the hearing on the grounds that the as yet incomplete OPP investigation would be jeopardized. In June and September 1980, over the vociferous objections of Copeland and Kopyto, the hearings were again adjourned at the request of the Attorney General.

Finally McMurtry abandoned the pretext. On October 30, 1980, counsel for the Attorney General appeared before the Justice of the Peace and directed a stay of the criminal proceedings against Yaworski and Chisholm. Although he acknowledged that there was "at least an apparent commission of a crime," McMurtry stated that "... it would not be in the public interest to prosecute." In the 20 page brief supporting the stay, McMurtry's counsel stated that the Attorney General was directing the stay on the grounds that the prosecution of the officers might not succeed, and further that it would be unfair to the officers to prosecute them since they were only following orders. Kopyto accused Mc-

Murtry of "throwing out the whole Nuremberg decision".

Dowson and Riddell appealed to the Supreme Court of Ontario for an Order directing the Justice of the Peace to proceed with the hearing. Mr. Justice Robert Montgomery, who was later to try Kopyto for scandalizing the Courts of Ontario, turned down the application. Dowson and Riddell appealed to the Ontario Court of Appeal.

tended result: the Justice of the Peace decided not to proceed with the charges.

By this time Riddell had dropped from the fray and Praxis had gone to the Federal Court in its battle – still continuing to this day – for redress. On Dowson's behalf, Kopyto commenced a civil claim against the RCMP officers in the Small Claims Court of Ontario. Dowson claimed \$3,000.00 as damages caused by the conspiracy of

On 12 December 1985, Judge Marvin Zucker of the Small Claims Court delivered his decision. Zucker, who had found for black activist lawyer Charles Roach in an assault claim against the Metro police some years prior, was considered by many lawyers to be a small-l liberal judge. Dowson however was not to share Roach's success.

The officers had argued that Dowson could not sue them because a statute protecting public employees says that such lawsuits against them must be commenced within a certain time limit and Dowson had commenced his lawsuit well outside the time limit. Kopyto argued that the officers were committing unlawful acts or were motivated by malice and therefore should not be protected by any time limitation. However Zucker found that if there was any malice it was directed against Riddell, not Dowson. Zucker also found that, while the officers did knowingly prepare false documents in order to discredit Riddell's leadership within the LSA, they did so in the performance of their public function or role and hence they were protected by the time limit.

In fairness to Zucker, a reading of the judgment suggests that Zucker was troubled by the fact that the impact of the Charter of Rights on the case was not argued by Kopyto. It appears Zucker may have been susceptible to such argument.

Be that as it may, after the long battle in the criminal court and the loss of an earlier civil suit arising out of the same events, Kopyto could not contain his outrage at this fresh defeat. He informed a *Globe and Mail* reporter that he had lost faith in the judicial system to render justice and went on to proclaim the now famous Krazy Glue analogy that was to lead to his conviction.

To certain extent, Kopyto's anger in this instance, while understandable, was misplaced.

It is true that there are cases in which the courts and the police do "stick together like crazy glue". Certainly any criminal lawyer would testify that, in the absence of independent evidence, it is virtually impos-



Dowson (L.) and lawyer: target of disruption by RCMP

Ian Scott, acting for the Canadian Civil Liberties Association, joined Kopyto and Copeland in arguing the appeal. The issue was whether the Attorney General had the right to stay proceedings before the Justice of the Peace had heard evidence and decided whether or not the charges should proceed. When the Ontario Court of Appeal dismissed the Appeal in September, 1981, Kopyto called the decision "a fundamental set-back to human rights in Ontario". McMurtry meanwhile, continued to maintain that the OPP investigation was continuing and that charges might yet be laid.

Finally, in October, 1983, the Supreme Court of Canada ruled that the Attorney General could stay the proceedings, but not until after the charges had been laid. When the matter did finally return to the Justice of the Peace for a hearing, although Copeland and Kopyto were able to call evidence, McMurtry was able to secure his in-

Chisholm and Yaworski to injure him in his trade by sending false documents to the LSA during the months of August and November, 1972. Dowson claimed that the letters sent by the RCMP created so much dissension and mistrust within the LSA that he was forced to quit his job as executive secretary and find employment elsewhere.

The RCMP officers immediately "tried to block the action, admitting their actions but claiming Kopyto had sued them too late. Despite attempts in higher courts to prevent evidence being heard, the trial proceeded. Yaworski acknowledged that he helped draft the letters. He claimed that the RCMP hoped that the letters would assist Dowson – whom they considered "harmless" and less of a security risk than Riddell – to become leader of the LSA. Yaworski also testified that the RCMP actions against the Trotskyists were reported regularly to the federal government.

sible to persuade a judge that his client had been beaten by the police while in their custody. Similarly, in the absence of independent evidence an accused person charged with assaulting a police officer in the execution of his duty has almost no hope of an acquittal. It is a rare judge who will acknowledge that a police officer might have as great an interest as an accused person in giving false testimony. And it is virtually inconceivable that a defence lawyer will not factor into his preparation for trial an assumed tendency in the Courts to favour police testimony over that of a criminal accused. So rather than exposing a bias in the courts, what Dowson's case illustrates in an unusually vivid way is that the serious bias towards the police in the criminal justice system lies not in the courtrooms but in the office of the Attorney General, the Minister responsible for the administration of justice in the province.

Consider McMurtry's role in Dowson's case. McMurtry not only refused to prosecute the RCMP officers (who had been clearly identified) for their involvement in activity which was probably criminal. He actually utilized his executive power to prevent the victims of the crime from commencing their own prosecution. Furthermore McMurtry stayed the prosecution of Chisholm and Yaworski on the grounds that the Crown might not be successful in obtaining a conviction if the case went to trial. But McMurtry's reluctance to prosecute, in the face of what Copeland says was an arguably strong case, stands in stark contrast to the usual inevitability with which prosecutions proceed, once initiated by the police, regardless of the potential for obtaining convictions.

McMurtry's attitude can best be understood in the context of the intimate relationship which exists between the Crown Attorneys and the police in Ontario. For example, in Metropolitan Toronto the Crown Attorney's briefs are kept at the police divisions and in most cases are not delivered to the prosecuting attorneys until the morning of trial. It is an almost universal rule that the police will



CANAPRESS PHOTO

McMurtry, then Attorney General, utilized his power to prevent the victims of the crime from commencing their own prosecution.

be involved in and often directly determine the Crown's position in plea bargaining. Many Crown Attorneys explicitly and openly delegate to the police such critical decisions as whether charges should be withdrawn or what kinds of penalties should be sought by the Crown on sentencing.

Although Kopyto was driven to the highest courts in the land, he was successful before some courts in asserting Dowson's claims. Where he was consistently unsuccessful was in overcoming the resistance of the Attorney General to allowing the charges to proceed. It is to the offices of the provincial Attorneys General and their federal counterpart that one must look for the explanation as to why so few officers investigated by McDonald in his inquiry have been brought to justice.

It was not the first time that Harry Kopyto had made statements in this vein, nor was he the first lawyer to suggest in the press that a bias in favour of the police exists within the judicial system. Nonetheless, Kopyto's remarks did not go unnoticed. Within a matter of months, the Law Society had commenced disciplinary action, newly-elected Liberal Attorney-General Ian Scott had ordered an investigation by the Ontario Provincial police, and Harry Kopyto was charged with the archaic offence of scandalizing the courts.

Scott's decision to prosecute Kopyto was puzzling. The offence of scandalizing the courts is a form of contempt of court which is no longer prosecuted in England and no longer exists in the United States. In those countries, while the Courts continue to



Liberal Attorney-General Ian Scott's civil libertarian reputation has been tarnished by the Kopyto case.

retain the power to punish for contemptuous behavior within the courtroom, judges are not able to stifle negative comments about the judicial process outside the courtroom through the use of the contempt power. In Canada however, contempt of court may be proven where a judge finds that words have been spoken outside the courtroom which are so damaging to the reputation of justice that ordinary citizens will lose their respect for the Courts and hence for the law itself. Such a notion has obvious problems: If the reputation of justice is strong, then criticism surely cannot harm it. If justice has a bad reputation, then criticism would seem to be necessary.

It is also reasonable to ask why the Courts need this protection. Judges have tremendous powers. First and fore-

most, they write judgments which have profound consequences for the individuals involved in particular cases and for society at large. They decide guilt and innocence. They pick winners and losers. And judges hardly need protection from lawyers. The fact that lawyers will appear repeatedly before the same judge is a built in disincentive to criticism of individual judges. Not to mention the years of training in law school and in their work environment which generate in lawyers a sycophantic respect for those above them in the legal hierarchy. Stripped of its official justifications, the object of this offence of scandalizing the courts is simply to extend what is a very powerful mechanism of control and obedience to authority within the courtroom beyond its walls and into society at large.

By its nature the offence of scandalizing the courts is anathema to the idea of freedom of speech, and it is unclear why Ian Scott, who has a reputation as a civil libertarian, would have felt the need to invoke it in the circumstances of Harry Kopyto's case. Undoubtedly there were judges who were offended. There is also speculation that conservative elements within Scott's bureaucracy made the decision and that Scott simply decided to allow the matter to proceed. In fact Scott testified at Kopyto's trial that the decision to prosecute was not made by him but by officials in his ministry. It is certainly likely that Kopyto had enemies within the Crown's office. Kopyto has initiated numerous lawsuits against the Attorney General and has fought representatives of the Attorney General relentlessly in criminal and civil courtrooms and in the media. He has embarrassed and angered members of the Metro Toronto police force, most notoriously when he captured on tape conversations of police officers threatening his client. When Kopyto's conviction on a previous contempt charge was overturned by the Ontario Court of Appeal, the Attorney General's office appealed to the Supreme Court of Canada.

Even on the left Kopyto had alienated many lawyers by his repeated and unjustified claims in the media to be the most consistent lawyer fighting for the rights of the people, ... "If there were two dozen like me the system would probably break down ...", and, "... I'm a fighter. There aren't too many lawyers around who fight."

While he must have anticipated a fight from Kopyto, Scott may well have under-estimated what lay ahead. Despite many personal and political differences, there was wide-spread support for Kopyto within the legal community, particularly among criminal lawyers. A legal defence committee was rapidly established composed of many lawyers from the Law Union of Ontario. Charles Roach, a civil rights lawyer known for simultaneously litigating his cases in the press as well as in the courtroom, was Kopyto's first choice as counsel. So was Bob Keller-

mann, a respected left criminal lawyer well-known for his tenacity in the courtroom. Roach and Kopyto kept media attention focussed on the case with numerous press conferences, cocktail parties and benefits, all organized out of Roach's office. Indeed, support was not difficult to mobilize. The NDP, the labour movement, the Canadian Civil Liberties Association, even Amnesty International, all protested the decision to prosecute Kopyto. Lawyers were also not difficult to mobilize. At an appearance to set a date for his trial, nine lawyers went on record as co-counsel.

But trouble quickly developed in paradise. As the trial date neared, the solidarity of the lawyer's defence committee began to crack. Within the committee, it became apparent that despite the appearance of collective decision-making, Kopyto and Roach were going their own way. All of Kopyto's lawyers agreed that the case was serious not only because of what was on the line for Kopyto, which was serious enough, but also because a bad decision had the potential to generally silence criticism of the judicial process. The great principal of free speech was at stake in this case and many of the lawyers felt an added sense of responsibility to present the case properly in the courtroom. But it gradually became clear that Kopyto had his own plans and that he could not follow a group agenda.

The conflict came to a head over the offer of a plea bargain from the Crown Attorney prosecuting the case, Dean Paquette. The deal, worked out with Copeland and Kellermann, would have seen Kopyto go to Zucker's court and make a "statement of clarification". He would state that by his comments he had meant no disrespect to Zucker or his court, although he continued to stand by his comments. Kopyto would have been free to hold a press conference after making the statement to Zucker and to repeat his criticisms. On this basis, Paquette would recommend to Scott that the charge be withdrawn.

The defence committee split over the issue. Kopyto had already stated publicly that he had meant no disres-

pect for Zucker, and many of the lawyers, including Kellermann, felt that the withdrawal would be perceived as a victory for Kopyto and for the rights of lawyers to criticize the judicial system. While it was true that important questions would have been raised at the trial: freedom of conscience and speech, the right to have truth as a defence to a contempt charge, etc., the likelihood of success, unless a liberal judge sat on the trial, was minimal. An acquittal would almost certainly be appealed, and the case would continue down the Dowson road of five years in court. Who would benefit by a protracted struggle of this nature? Was it worth the tremendous dedication of time and energy which would be required of the lawyers involved, who had, after all, other cases and political interests they considered important?

Could you really be prosecuted for what you said even if your statements where true?

Kopyto and Roach maintained that the statement would be perceived as an apology and hence a defeat for Kopyto and his right to express his opinions. Kopyto insisted that the trial proceed. He held a press conference and announced his refusal of the deal. If Ian Scott would apologize to him, he would consider allowing the charges to be withdrawn.

By the time the trial opened, Kopyto had lost almost all of his lawyers, including Kellermann. He lost one more during the trial. The presiding judge turned out to be Mr. Justice Montgomery, whose decision upholding McMurtry's stay of the prosecution of Yaworski and Chisholm had been overturned by the Supreme Court of Canada. Nonetheless, Mont-

gomery, whose political views are known to be well to the right, refused to disqualify himself on the grounds of appearance of bias.

The trial received extensive and favourable media coverage. Kopyto explained the frustrations in the Dowson case which led to his outburst in the *Globe and Mail*. His lawyers argued that Kopyto should be allowed to prove the truth of his statements as a defence to the charge. Montgomery rejected the argument and the press went wild. Could the law really be that you could be prosecuted for what you said even if your statements were true? Score two points for Kopyto: the law looked bad, and the appearance was created that Kopyto's statements were indeed true.

But the trial was not without its ludicrous moments. One such occasion occurred when Ian Scott was on the stand, and, fortified by Montgomery, was easily fending off the apparently confused questioning of Kopyto's defence counsel. Kopyto leapt from the prisoner's box, elbowed his counsel aside and demanded that he be permitted to examine Scott himself. "History," he later told a reporter, "had meant for me to question Scott." Montgomery however was not a student of history, and Kopyto was denied the confrontation. But what was history to Kopyto and Kopyto to history anyway? On one of his many turns in the witness box, Kopyto testified that he realized at the age of 7 or 8 he had been spared from death in the holocaust, because he, "Harry Kopyto, has been put on earth for one reason - To live his life in such a way as to make it impossible for social injustice and inhumanity to prevail."

Kopyto had just invented a messianic Marxism, but would Kopytoism sell?

As events transpired, and despite the generous coverage in the press, Kopyto did not win his case in the courtroom. In fact, when Montgomery was selected as the judge for Kopyto's trial, the conviction was predictable. The suspense lay in what punishment Montgomery would impose. Kopyto clearly

continued on page 43

ment and commercial television networks. In time, a single motion picture, shown via several different media delivery systems in many nations, could reach between 500 million and one billion viewers. Within a few years the nineteen films discussed here could reach an audience of ten to twenty billion.

Stereotypes form "pictures in our heads," and pictures relay powerful messages. Concerned moviemakers could channel such messages in a constructive and entertaining manner. But films cannot be entertaining or their messages constructive when a people are dehumanized. It is time for filmmakers to revise their perception of "Arabland" and begin to portray a new Hollywood Arab.

CD

KOPYTO

from page 12

expected a jail sentence but Montgomery, who had called Kopyto's comments "a blatant attack on all judges and on all courts", had something more inventive in mind. After finding Kopyto guilty of scandalizing the courts, he ordered that until Kopyto had apologized to all of the judges in the Province, he would not be permitted to appear in any court in Ontario.

Once again there was an outcry in the press. Montgomery's demand that Kopyto salute the flag or lose his livelihood went too far. The exercise of the judicial power to extract obedience was too stark. Once again lawyers who had been alienated by the style of Kopyto's defence were back in his corner. With the consent of the Crown, three judges of the Ontario Court of Appeal ordered a stay of the penalty pending appeal in a hearing reputedly of less than 10 minutes.

The importance of Harry Kopyto's case lies in what it reveals about the ease with which the courts and the state are willing to suppress criticism, particularly if the criticism is expressed in language which is strong enough or colourful enough to attract attention. Perhaps Ian Scott did not want this case to go as far as it did, and perhaps Kopyto pushed him by his frenzied denunciations. Nonetheless Scott could have stopped the prosecution and he did elect not to intervene.

The fact is that in Harry Kopyto's case, the issue of scandalizing the courts did not even arise. How could Kopyto's comments have posed any threat to the judicial system? In the 1980's there is no chaos in the courtrooms, just as there is no anarchy in the streets. Lawyers are, as usual, as conservative as everyone else. The machinery of justice is intact. Surely if there is going to be a prosecution of an offence which by its nature is fundamentally obnoxious to a democracy we might have expected some more urgent justification. Instead, it remains that for no very important reason, the full weight of the criminal justice system was brought to bear solely to muzzle a lawyer who had made a lot of people angry in the office of the Attorney General.

Unhappily for his adversaries, Kopyto's stature as a "human rights" lawyer was enhanced by these proceedings. He had been relentless in his pursuit of the RCMP officers. He had insisted on his client's right to redress in the face of implacable opposition from the public authorities. He refused to apologize for his statements knowing that his livelihood was at stake. Out of the whole Dowson affair he was the only one to be prosecuted and punished. He had the courage of his convictions.

In the final analysis, the reputation of justice in Ontario was harmed more by the airing of the saga of Ross Dowson and Harry Kopyto than by Kopyto's few impolite remarks. The case of Harry Kopyto reveals how easily, despite our brave new charter of Rights, the institutions that govern our system of justice can be mobilized to prevent criticism of themselves.

CD

(Found in 1987)

RALLY IN SUPPORT OF FREE SPEECH!

DEMAND THE CHARGES AGAINST HARRY KOPYTO BE DROPPED!

For uttering the words - the courts "are warped in favor of protecting the police". Toronto human rights lawyer Harry Kopyto has been charged by the attorney-general of Ontario with criminal contempt of court. His trial has been set for September 22.

words for uttering the

Kopyto spoke these words after an eight year-long suit that he had been arguing on behalf of his client against RCMP harassment of the labor and socialist movement in the seventies had been dismissed on the grounds that the police were only doing what Ottawa had ordered them to do.

The legal profession and widely diverse supporters of human rights are aghast that lawyers are being threatened for criticising the present justice system. Join them on:

SATURDAY, MAY 17, 7:30 p.m.

Board of Education Auditorium, 155 College St., (west of University Ave.)

Hear:

SVEND ROBINSON, NDP M.P. [Burnaby]
federal NDP Justice critic

Michael Mandel
professor of criminal law, Osgoode Hall Law School

Rabbi Reubin Slonim
author and lecturer

A spokesperson for the Metro Toronto Labour Council t.b.a.

and a galaxy of representatives of Toronto community movements and organizations

Among the entertainers will be the incomparable singer and raconteur Arlene Mantle and poet Robert Priest

Chairperson - Diane Martin, criminal lawyer

co-sponsored by the **Harry Kopyto Defence Committee** (416) 361-5885 and the **Law Union of Ontario**

(Found in 1987)

CANADA
CANADIAN TRIBUNE

Charge against lawyer threat to civil rights

TORONTO — A charge laid against a city lawyer has serious implications for the public's right to criticize the judicial system.

Ontario attorney-general Ian Scott ordered that the little used section of common law known as "scandalizing the courts" be used against Harry Kopyto for remarks he made to the press following a court trial.

In December 1985, after losing an eight-year battle to have the RCMP charged with subversion of an ultra-left group, Kopyto charged in a newspaper interview that the decision was "a mockery of justice. It stinks to high hell." The Canadian courts he said were "warped in favor of protecting the police. The courts and the RCMP were sticking so close together you'd think they were put together with Krazy Glue".

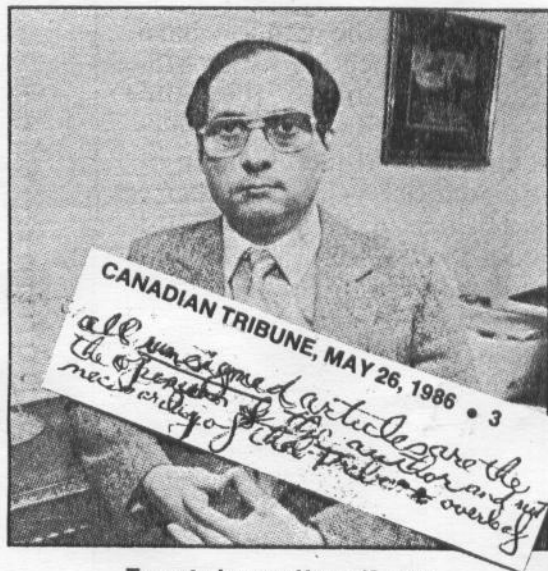
Two months later Kopyto was served with a summons citing the phrase "warped in favor of protecting the police".

The charge which doesn't exist in the United States, has never been used in Australia and has not been used in Britain for 50 years, has Kopyto facing imprisonment, a fine and/or loss of his right to practice law.

At a rally in his support May 17, New Democratic Party justice critic, B.C. Member of Parliament Sven Robinson, said the charge was an attempt to stifle dissent.

"I want to put Mr. Scott on notice that Harry Kopyto is not the only one who will speak out on the question of a justice system which is in fact an instrument of injustice in too many cases. Will Ian Scott charge each and every one of us?"

Robinson was joined on the platform by Osgoode Hall law professor Michael Mandel who cited



Toronto lawyer Harry Kopyto

several cases of the police getting off scott free in the courts, the most notable being the 1981 McDonald Commission on the RCMP.

The police are noted for harassing individuals who lay complaints against them, the lawyer said. Kopyto "confronted the police steadfastly and earned the deserved resentment of the police. We are here to defend what he said and his just condemnation of the courts for failing to protect our democratic rights".

A defence committee and a 30-member legal team has been formed in support of Kopyto. It can be reached at 372 Bay Street, Suite 1708, Toronto M5H 2W9, 361-1404.

Science relies on military

(Funded in 1987)

Invitation to a
BENEFIT
in support of the
Harry Kopyto Defence Fund

Saturday, May 28, 8 p.m.
at the the home of Hetty & Charles Roach

6 Humewood Drive
(first block west of Christie, just north of St. Clair)

Entertainment, fully catered buffet, refreshments, stimulating conversation

*Contribution \$25—all welcome. **Bring a friend***

For further information on the Kopyto Defence Fund call 361-1404

*...while there is a lower class, I am in it;
while there is a criminal element, I am of it;
and while there is a soul in prison, I am not free.*

—Gene Debs

Spy agency 'gagged' by Ottawa, official says

By David Vienneau Toronto Star

OTTAWA — Solicitor-General James Kelleher has ordered the official spokesman for the Canadian Security Intelligence Service not to talk to the media and to refer all inquiries to his office.

"We have been gagged," one source in the agency said yesterday. "The service was told not to comment on any of the events that have been transpiring."

Ghislaine Delorme, Kelleher's press secretary, confirmed media inquiries should be directed to the minister's office.

"The minister is the only spokesman," Delorme said, noting that she did not know why the policy had been changed.

Gerry Cummings, the service's official spokesman, said he had been told to transfer all calls to Kelleher's office. Earlier this week, he had spoken to the media about documents released by New Democrat MP Svend Robinson.

Cummings said he also did not know the reason for the change in policy.

Under fire

The service has been under fire in recent weeks after it was revealed that it used misleading information to gain judicial permission to wiretap a suspect's phone.

The disclosure resulted in the staying of charges against the suspect, Harjit Singh Atwal of Surrey, B.C., and eight other people who had been charged with conspiring



Svend Robinson: New Democrat MP released documents on security activities.

to murder a visiting Punjabi cabinet minister.

It also was revealed that wiretaps showed the agency knew eight days in advance that the minister was visiting Canada and that his life was in danger, but did not pass on this information to the Royal Canadian Mounted Police.

Planning Minister Malikat Singh Sidhu was shot twice in May, 1986, while visiting Vancouver Island. He survived the attack. Two federal cabinet ministers said later that the government did not know he was in Canada.

It also has been alleged that the service knew in advance about the apparent bombing of an Air-India jet in June, 1985, that resulted in the death of 329 people.

And there have been charges that the agency is riddled with morale problems and has been improperly targeting the peace and labor movements.

The order from Kelleher would appear to contradict guidelines issued by Prime Minister Brian Mulroney's office on Nov. 23, 1984, which said civil servants could provide "factual information" on existing government policy to the news media "on the record."

Mulroney said at the time that the policy was intended to provide clear avenues of access to government spokesmen and to quell complaints that his government had imposed unprecedented gag rules on the public service.

Earlier this week, Cummings confirmed that documents released by Robinson, showing the service had four people who monitored the activities of individuals involved in the peace movement, were indeed intelligence service records.

Cummings also said individuals who might be steering innocent Canadians in the wrong direction were being investigated by the service. He said entire groups were not being targeted by the agency.

Within mandate

Yesterday, Robinson released another set of papers showing the

service also was keeping tabs on the Communist parties of Canada and Quebec. Cummings could not confirm their authenticity and Delorme said she knew nothing about them.

Kelleher told the House of Commons that the service had not operated outside its mandate, which entitles it to investigate anybody who is considered a threat to the security of Canada.

"I have received no evidence that the service has acted beyond the mandate given it by Parliament," Kelleher said before noting that two investigations are under way to determine whether the agency is abusing its power.

Robinson had asked how the government could justify the "harmful attack on political parties that are legal in Canada. Why does the minister feel that the service has the right to infiltrate these democratic organizations in Canada?"

Later, Robinson said the service "has gone wild" with its "harassment" of the peace and labor movements and the two Communist parties. He said that even though the parties may not be popular, they have a right to exist.

But when asked whether he could be absolutely certain that the service was targeting individuals improperly, Robinson turned and walked away from reporters.

OCTOBER 4 1987

They're not wild about Harry

You might not be either, if you were in the legal establishment and had to deal with gadfly Harry Kopyto . . .

By Tom Spears Toronto Star

Harry Kopyto starts to worry about his future as soon as he wakes up each morning.

It's been six months since the Supreme Court of Ontario heard his appeal of the contempt of court conviction he got for blurting out that the courts are "warped in favor of the police".

Now he's waiting for the court's decision.

"Every morning I get up and I wonder, will it be today?" the lawyer says. "Every day is more nerve-wracking."

Socialist, human rights activist, publicity lover and general gadfly, Kopyto is in deep trouble, and knows it.

He turned down a lower court's offer to let him practise law if he just apologized for the impromptu remark, and could even be jailed if he loses this round.

He also says the Law Society of Upper Canada has started discipline proceedings against him that could lead to his disbarment. (The Law Society won't say whether it's taking any action against him or not.)

Fellow lawyer Paul Copeland, who sees his own politics on the "left bar" as similar to Kopyto's, delicately suggests that Kopyto "is on the front lines of what is permissible and impermissible in the practice of law." Copeland says this is especially true in Kopyto's penchant for very public and often inflammatory statements, which tend to annoy many other lawyers — and sometimes judges.

Copeland, a leading Toronto defence lawyer and former benchner of the Law Society of Upper Canada, was instrumental in persuading the Criminal Lawyers' Association to ask for status allowing it to make legal submissions in Kopyto's contempt case.

The contempt issue "is certainly not (just) one lawyer in trouble with one judge," Copeland said. "It has caused concern for members of the legal profession.

"A number of people think it will have a real, chilling effect," Copeland said. "There's no

question that everybody is going to be cautious of the way they speak."

Kopyto has been in trouble with judges before, beginning in 1980 when he cancelled one court date to observe Chanukah with his family and was then seen in another courtroom on Chanukah.

Kopyto claims it was an innocent slip. But the Crown attorney's office didn't buy this, and told the judge, who ordered him to appear in his court for a chat. Kopyto didn't appear, and was fined \$1 on each of two counts of contempt.

He appealed successfully. The Attorney-General's ministry tried to appeal that decision to the Supreme Court of Canada, but failed.

Kopyto believes the ministry has borne him a grudge ever since.

Gets the admission

Scene one from an inquest:

Kopyto is lighting into a witness. Pacing, probing, picking up papers and slapping them down, pointing, he wants to hear the witness admit that a woman who died was once badly treated by her landlord.

He gets the admission, but then he wants to hear it again. Coroner Margaret Milton has asked him to change the topic, and when that doesn't work she smiles her sweetest smile and adjourns the inquest right out from under him.

The next day she does it again. Three other lawyers at the inquest are visibly tickled.

His outer office is deceptively tranquil. Three Impressionist prints (two Monets, one Corot) welcome the visitor with rural peace and sunshine.

But fire and brimstone are waiting in the inner office. Dominating the room is a print of Goya's *The Execution, May 3, 1808*: Under black skies, a ragged group of civilians is being gunned down by a uniformed, rigid, faceless firing squad.

Among the civilians stands a man in a brilliant white shirt, arms outstretched in a cruci

See THEY'RE/page D6



TONY BOCK/TORONTO STAR

Any day now lawyer Harry Kopyto will hear the Supreme Court's decision on contempt appeal. He's been in trouble before — but this one could lead to his disbarment.

They're not wild about Harry

Continued from page D1

fixion pose, waiting for the final volley.

"Man's inhumanity to man. That's why I have it on my wall," Kopyto said.

"That's what life is all about. It's what law is all about, and it's a struggle against injustice. . . Unless there are people who are willing to sacrifice everything, no holds barred, then no legal system can survive."

But the immediate risk is to Kopyto's own career, not to the judicial system.

He was convicted of scandalizing the court (a form of criminal contempt) for the interview in which he said the courts were "warped" and are so close to the police that they seem to be "stuck together with Krazy Glue."

The vital paragraph is blown up and glued to a placard that he keeps in his office, ready to hit the streets in a demonstration if needed.

"Under no conditions will I ever apologize," he said. "I would sooner dig ditches than apologize."

Some lawyers never go to court; they take up another type of practice, or they take on juniors or partners who go to court while they themselves work in the back-ground.

"I'm a courtroom lawyer," Kopyto said. "To stop me from going to court means to stop (me) from practising."

"He should have taken the deal," said Paul Copeland, referring to the order to apologize. "I wouldn't have put my body on the line. He both deserves some credit for it and personally some criticism." He said Kopyto showed "a great deal of courage in putting his body on the line. I also think he was very stupid for it."

'Take the deal'

Civil libertarians hope the case will address an issue that's never been dealt with adequately, said Alan Borovoy of the Canadian Civil Liberties Association.

Criticism of courts and their decisions has always had to be careful and free of invective, he said.

"In the real world verbal vinegar is often necessary if you're going to have political bite," he said. "If you speak in legalese that conforms to the canons of Emily Post you're not going to be read, and you may not even be reported. When was the last time you saw a line-up for the Canadian Bar Review?"

Love him or hate him, other law-

yers pay attention; a recent edition of The Canadian Lawyer, a monthly magazine, aroused a good deal of interest when it asked the question: "What are we going to do about Harry?"

"He's ready to speak his mind at any moment. Lawyers typically aren't like that, are they?" said Mike Crawford, the magazine's executive editor. "They're the mouthpiece for somebody else. They aren't used to someone who speaks his own opinions."

"It's a departure from the normal role of the lawyer. That's why Harry attracts good and bad attention," he said.

Scene two from an inquest:

On the last day of the inquest Kopyto's belligerence vanishes. Some of the emotion in his voice remains, but he gives a polite, positive, compelling address to the jury in 40 minutes. The coroner compliments him on it.

He shakes hands with the other lawyers and politely takes his leave.

He says he was born "with a taste of ashes in my mouth" in a camp for displaced persons in Ulm, West Germany, in 1946. His sense of Yiddish identity has prevented from changing his name to make it sound less Jewish, though at the same time he does not see himself as deeply religious.

As a child he demonstrated for mercy for doomed atomic spies Julius and Ethel Rosenberg in 1953.

"The first question I ask myself is, 'Why was I alive?' " when so many of his relatives were killed in concentration camps.

"I was born with a chip on my shoulder and I was born with a hatred of injustice that is still burning within me."

"I consider myself an artist, and law is just a medium in which I work. I work with the medium of people. I'm going to reshape and reconstruct society."

The rush of words and jumble of metaphors are standard Kopyto; he isn't subtle and he doesn't look for diplomatic ways to say things.

Separated from his wife, he has joint custody of his son Marc, 12, and daughter Erica, 9.

"Basically I'm a very conservative guy in my private life. You won't see me at a disco," he said. "When I'm not doing the crazy things I do I'm either playing chess with Marc or reading Archie comic books with Erica."

He said he still maintains "a warm and ongoing relationship" with his estranged wife. Often he travels with his children; they have been to Europe and Africa, and re-

turn frequently to his old neighborhood in the College St.-Spadina Ave. area because "I want to teach them what it's like to be a little Jewish immigrant kid in Toronto."

He's been accused of bringing more rhetoric than substance to the courtroom, though he says "it's a real myth that Harry Kopyto goes in there shouting and arguing politics. I don't go into court shouting; I prepare on the law."

At a recent inquest a juror told Kopyto in open court to stop wasting time.

"That should tell you something," said Jane Egan, a lawyer for Metro Toronto who often represents the police.

"If a juror does that at an inquest, the only place that a juror can speak out, you have to wonder what juries think of him in other trials," she said.

"He was obviously aggravating the jury to such an extent that I was getting concerned," coroner Margaret Milton said in an interview later. "I was really concerned. And so when his address to the jury came it was very good. I was very pleased."

Kopyto has made his name partly through calling press conferences before launching civil suits, and partly through some high-profile cases.

His clients have included:

□ Ross Dowson, a member of the League for Socialist Action. Mounities who infiltrated the league in the early 1970s circulated a forged letter to create dissension in the group. Dowson tried to sue them, but was ultimately prevented by a law relieving police officers of personal liability stemming from their jobs. This was the case that brought about the "Krazy Glue" quotes;

□ John Damien, a steward fired by the Ontario Racing Commission because he was homosexual. After 11 years in the courts Damien reached a settlement of about \$50,000 in 1986, but he died later that year. Kopyto was his lawyer for the first five years of proceedings; and

□ Charles Keeping, a police informer who was threatened by a constable on the Metro Police drug squad. After the officer denied making threats, Keeping produced in court a secretly taped conversation, in which the officer had threatened to go "for the throat" if Keeping refused to testify in an earlier court case. The officer was convicted of perjury last year.

'Little lawsuit'

Scene three from an inquest:

A few days after the inquest

Kopyto phones The Star to say, "Guess what? We're having a little lawsuit" — against the dead woman's landlord.

The landlord's "stonewalling" at the inquest was a ploy to hide the landlord's "callous disregard" and negligence that resulted in his late client's death, he says.

Kopyto is on the attack again.

Some lawyers openly criticize his style.

"Some of Harry's grandstanding" turns off other lawyers, said Copeland. "After you do that kind of thing you have to follow up with some good legal work." Asked whether Kopyto generally did good legal work, he answered: "I have concerns in that area."

"Sometimes in what he calls his enthusiasm to act for his client I think sometimes he doesn't really do his client much justice," said Egan.

Kopyto now claims to be under attack from the legal establishment, in the form of three accusations by the Law Society that could lead to discipline.

"They're trying to isolate me now in the legal profession," he said. "They will drive me out unless there's a massive public outcry. I feel as if there's a great magnifying glass and the heat is concentrated on me."

"I've stepped on too many feet."

Kopyto set to face law society charges after 'vindication'

By Judy Nyman Toronto Star

Toronto lawyer Harry Kopyto's professional life is still on the line, despite Friday's Ontario Court of Appeal ruling overturning his contempt of court conviction for saying the courts and police stick together like glue.

"There is no question that it's a total vindication of my decision not to apologize. And it's a victory for all the people in the legal profession who backed me so solidly. Without that backing, I would not have had this tremendous victory," Kopyto said of the ruling.

However, tomorrow Kopyto goes before the discipline committee of the Law Society of Upper Canada, the legal profession's governing body, to face six counts of behavior unbecoming a member. Kopyto said if the committee finds him guilty, it could lead to his being disbarred.

"There is no question in my mind that this victory is only the first step in the defence of my right to practise law. There is a systematic attempt being made by the judicial establishment to drive me out of the legal profession," Kopyto said, referring to his 10 a.m. appearance at Osgoode Hall tomorrow.

He is charged with plagiarizing a colleague's statement of facts and incorporating it into one of his own cases, plagiarizing a legal aid memorandum and incorporating it in a letter, overbilling legal aid clients, secretly tape recording a law society lawyer, denying that he did these things, and professional misconduct in relation to the contempt of court charge.

'Immunized' by decision

"They are Mickey Mouse

charges designed to blacken my name, attack my integrity and drive me out of the profession. They are politically motivated because I am a radical lawyer who challenges the establishment. They have not been able to do it (prevent him from practising) through the criminal courts so they are now trying to do it through their own internal procedures," Kopyto said.

All five judges who heard Kopyto's appeal last spring set aside his conviction in a judgment released Friday. Three of the judges declared the law under which Kopyto was charged unconstitutional in his case.

Associate Chief Justice of Ontario Charles Dubin complained that the judges, in overturning the decision, appeared to have "immunized" Kopyto from any possible disciplinary action by the law society. He added that Kopyto's comments were disgraceful and he should not be allowed to escape discipline proceedings by his peers.

Associate charged

Kopyto's problems began in late 1985 after a Provincial Court judge dismissed a lawsuit he brought against the RCMP on behalf of a Toronto man.

In an interview published in a Toronto newspaper, Kopyto criticized that ruling and said the courts were so biased in favor of the police "you'd think they were put together with Krazy Glue."

He was charged with the old common-law offence of scandalizing the court — a form of contempt of court — and convicted by a Supreme Court of Ontario judge after a trial in 1986.

Kopyto says the law society is not only out to get him but also his friend and business associate Angie Codina, who faces unrelated disciplinary charges before society tomorrow "simply because of her association with me.

"I have a copy of an internal Aug. 28 memorandum from Reg Watson of the discipline council of the law society to the file following a meeting with my lawyer Charles Roach.

"In it, Watson says: '... the cause of Angie's problems was linked to Harry Kopyto... I said our basic position was that both Harry and Angie should be disbarred. However, we would accept a resignation by Kopyto, combined with a suspension for Codina... with Kopyto out of Codina's professional life, she wouldn't be subject to the same pressures and she would cease being a discipline problem.'

'Held hostage'

"What is significant is that Angie is being held hostage. If I resign they'll go easy on her. If not they'll go for both of us. This is an abuse of process. It is incredible that the law society would seek to trade lawyers off against each other like this. Our charges are totally unrelated so there should be no connection between us," Kopyto said.

"They have been harassing me for 15 years and I am extremely concerned they may succeed this time because I don't have the same protections (before the law society) under the Charter (of Rights and Freedoms) or other laws as provided in criminal cases," Kopyto said.

Codina says she has been told on several occasions that "if I valued my right to practise law I would have nothing to do with Harry Kopyto.

"I tried to negotiate a settlement on my matter but they refused to do so unless they can get a settlement for Harry and me together and they would only settle if Harry resigned from the profession," she said.



Kopyto

Law society wants him out of business Kopyto charges

By Rick Hallechuk
Toronto Star

Toronto lawyer Harry Kopyto accused the Law Society of Upper Canada yesterday of trying to drive him out of business.

Kopyto, who last week had a contempt of court conviction overturned by the Ontario Court of Appeal, told reporters outside Osgoode Hall that the law society is harassing him with professional misconduct charges to prevent him from representing "black people, poor people" and others fighting the establishment.

Kopyto and his associate Angie Codina are facing disciplinary proceedings before the law society, the legal profession's governing body.

On Friday, a five-judge Court of Appeal panel set aside Kopyto's contempt of court conviction for saying the courts and police stick together like glue.

Kopyto's comments came after he was told that a three-member law society discipline panel would not reach his case yesterday as planned. The panel adjourned the hearing until today to hear Kopyto's legal arguments on why the law society lacks jurisdiction to charge him.

Kopyto is accused of, among other things, plagiarism and surreptitiously tape recording a conversation with a law society lawyer, while Codina is charged with counselling immigrants from Hong Kong on how to circumvent Canadian immigration regulations.

"None of these charges are substantially true," Kopyto said. "They (the law society) have distorted what happened.

"When it comes to Kopyto and Codina, you can't spit on the sidewalk without being charged," he added.

Kopyto said the benchers of the law society are the type of lawyers who have represented organizations he has fought over the years, including banks and police forces.

"Do you think I can get a fair hearing from them? I doubt it very much," he said.

Earlier, Kopyto told the panel at Osgoode Hall that his case must be dealt with immediately so he and Codina can establish their innocence.

Kopyto said the law society knew that he and Codina need two full days to make their legal arguments, and said Codina had to interrupt business in Hong Kong to fly to Toronto for the hearing.

Kopyto also accused senior law society discipline counsel Stephen Sherriff of hanging up the phone on him earlier in the week.

Sherriff conceded the point, but said he did so because Kopyto violated a confidence by leaking the contents of a law society memo to the media.

The memo suggests that the law society's discipline department would be content with suspending Codina, if Kopyto would agree to resign from the practice of law.

Kopyto also complained about panel chairman Lee Ferrier's decision to disqualify himself from taking part in the hearing.

Despite Kopyto's request that he do so, Ferrier said he wasn't obliged to reveal why he is withdrawing from the case.

Last night, Kopyto fired off a letter to the law society, accusing staff members of not issuing summonses on his behalf to four witnesses he wants to examine at the discipline proceeding.

In his letter, Kopyto says he wants to lodge a complaint against Sherriff, discipline counsel Reg Watson and law society secretary Kenneth Jarvis.



Kopyto

Kopyto scores 1st-round victory in law society fight

By Rick Haliechuk Toronto Star

Toronto lawyers Harry Kopyto and Angie Codina scored a preliminary victory yesterday in their battle with the Law Society of Upper Canada, which has accused them of professional misconduct.

After three hours of legal wrangling, a three-member law society discipline panel agreed with the two lawyers that law society staff should have issued summonses to four witnesses as they had asked them to do.

The failure by the staff to do so was "an abuse of process," panel chairman Paul Philp said yesterday at Osgoode Hall.

But the panel dismissed the argument advanced by Kopyto and Codina that the discipline proceedings against them should be stopped.

When the hearing reconvenes sometime in the new year, Kopyto and Codina will argue that the law society's discipline procedure violates the Charter of Rights.

The law society alleges that Kopyto, 41, is guilty of professional misconduct for, among other things, submitting erroneous accounts to the Legal Aid Plan and plagiarizing another lawyer's research.

In a separate proceeding, the law society alleges that Codina, 29, counselled people in Hong Kong on how to circumvent

Canadian immigration regulations.

Kopyto and Codina want to subpoena senior discipline counsel Stephen Sherriff, discipline counsel Reg Watson and former law society treasurers Pierre Genest and Arthur Scace.

Patrick Wilson, a private investigator hired by the defence team, told the hearing he delivered the summonses to the law society last week, but could not get staff to sign and issue them.

The discipline panel agreed with the submissions that when a solicitor facing discipline requests that summonses be issued, the secretary of the law society must issue them.

During his time as a witness yesterday, Kopyto claimed that Genest formerly acted for the Royal Canadian Mounted Police and was instrumental in instituting law society action against him.

Kopyto last week had a 1986 contempt of court conviction for saying the police and the courts stick together like glue overturned by the Ontario Court of Appeal. The glue remark was made after a Provincial Court judge threw out a lawsuit Kopyto had brought against the RCMP on behalf of a Toronto man.

News

End of round one in *Law Society v.*

December 18, 1987

By Rick Haliechuk
Special to Lawyers Weekly

TORONTO—Lawyers getting into the witness box to answer questions; evidence being led by a university mathematics professor; witnesses making legal arguments. Just another typical day in the long-running feud between maverick Toronto lawyer Harry Kopyto and the Establishment.

It was round one in the battle between the Law Society of Upper Canada and Mr. Kopyto, the feisty, radical lawyer whose conviction for contempt of court was recently overturned by the Ontario Court of Appeal (see *Lawyers Weekly*, Dec. 11).

On Dec. 2, Mr. Kopyto and his associate Angie Codina attended a society discipline committee hearing at Osgoode Hall to answer separate complaints of professional misconduct.

The complaint against Mr. Kopyto, issued Sept. 10, contains six particulars:

- that Mr. Kopyto plagiarized legal research provided him by the Legal Aid Plan Research Facility and then billed the Plan as though he or his office had done substantial research on behalf of a client;

- that he plagiarized the legal research of Toronto lawyers Timothy Danson and Boris Freesman for purposes of a court motion, after assuring Mr. Danson the material was for a newspaper article he was writing;

- that he tried to mislead the society during its investigation of the above allegation;

- that he surreptitiously tape-recorded a meeting he held at Osgoode Hall with his counsel Charles Roach and society discipline counsel H. Reginald Watson;

- that when confronted with the suspicion he was surreptitiously tape recording the meeting, he falsely denied it;

- that he deliberately prepared and submitted erroneous accounts to the Legal Aid Plan.

Mr. Kopyto has previously characterized the charges as "Mickey Mouse" in nature.

As for Ms. Codina, the society alleges, in a complaint issued June 3, that she:

- counselled people on corrupt techniques to circumvent Canadian

immigration regulations during a public presentation in Hong Kong in 1986;

- attempted to mislead the society during its investigation of the above complaint;

- counselled a man to falsely inform Canadian immigration officials that his sister had no relatives still living in Portugal after the man told her his sister did have siblings living there;

- permitted unethical practices to take place in her law offices, including employing a junior lawyer, knowing he was under suspension;

- misled a client about waiting for a trial date, when the matter was not yet on the trial list;

- misled a potential client with an advertisement offering free consultation, and then trying to charge the person \$250 when the person declined to retain her services.

The couple intend to argue that the society has no jurisdiction to discipline them, but that argument has been saved for another day.

The Dec. 2 hearing before benchers Paul Philp, Donald Lamont and Roderick Ferguson concerned what Mr. Kopyto and Ms. Codina allege was an abuse of process by the society.

In late November, the couple asked the society to issue summonses to testify to Stephen Sherriff (the society's senior discipline counsel), Mr. Watson, and to former Treasurers Pierre Genest and Arthur Seace.

The proceedings before the discipline panel opened with several of Mr. Kopyto's supporters on hand, including a little girl who wandered into the hearing room, holding a doll in one hand, and her mum's hand in the other.

Also in attendance were several reporters, including reporters for local Toronto television stations.

Mr. Roach advised the panel that he and Ms. Codina would be co-counsel in the Kopyto matter, and that he and Mr. Kopyto would share the legal duties in the Codina affair.

But evidence on the abuse of process issue was led by Peter Rosenthal, a mathematics professor at the University of Toronto.

Patrick Wilson, a private investigator hired by the defence, testified that he had difficulty in speaking to society secretary Kenneth Jarvis when he went to the society offices on Nov. 25 in order to have the summonses

Kopyto and Codina

signed and issued.

The defence contends that under s. 33(10) of the *Law Society Act*, the secretary "shall" issue such summonses when requested by a solicitor who is facing discipline proceedings.

After Mr. Wilson finished his testimony, Mr. Roach took the stand, and told the panel of discussion about the summonses he had with Mr. Watson.

According to Mr. Roach, Mr. Watson suggested he should have some "human compassion" for Mr. Genest, who has been ill.

But Mr. Roach contended that Mr. Genest and the others being sought to testify have private files in their possession which might help Mr. Kopyto and Ms. Codina to make a complete defence.

A request by Mr. Kopyto to question Mr. Roach was rejected by the panel.

Under cross-examination by Mr. Sherriff, Mr. Roach revealed that it was Mr. Kopyto who advised him of the existence of the private files.

Mr. Roach and Mr. Sherriff also disagreed on whether the disclosure of its case by the society to the defence was to be treated in confidence.

A few days before the hearing, the defence had provided a Toronto newspaper with a memo to file by Mr. Watson, in which Mr. Watson notes the possibility that Ms. Codina might plead guilty to the third count against her. In return, the society would consider merely suspending her, provided Mr. Kopyto agreed to resign, according to the memo.

Next to take the witness stand was Mr. Sherriff, who explained that he had attempted to solve the problem of the summonses, by advising the defence there would be no problem in producing the witnesses.

He also admitted to abruptly ending a telephone conversation with Mr. Roach, but said he did so because the defence team had broken a confidence and leaked the Watson memo to the press.

Next on the stand was Mr.

Kopyto, who accused the society of being "vindictive" and said the witnesses he wants to call would have evidence to give in connection with the pending jurisdictional challenge to the society's competence to discipline him and Ms. Codina.

The Law Society, he said, acts both as prosecutor and judge, contrary to the Charter of Rights, but further attempts by Mr. Kopyto to argue the case were cut off by Mr. Philp, the panel chairman.

Finally, Ms. Codina testified, and denied the society allegations about counselling immigration fraud, maintaining that it was merely the society's interpretation that she was, in fact, counselling.

"There's obvious acrimony here," Mr. Rosenthal said in his submissions to the panel. "This is not a normal complaint."

He urged the panel to conclude that failing to issue the summonses was serious enough to warrant staying the proceedings entirely.

Mr. Watson argued that although the summonses weren't forthcoming, the accused were not prejudiced since the witnesses would be made available as requested.

When the hearing resumed after lunch, Mr. Philp announced that the failure to issue the summonses was an abuse of process as alleged, but that the abuse would be overcome if they were now issued.

The panel decided to reject the application to stay, but suggested

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that the society consider retaining outside counsel to present the case against the accused.

Mr. Sheriff said he would so recommend to his superiors, then took the opportunity to attack the defence team again over the leak of the document.

"I'm amazed there's been publication," he said. "I can't have any confidence in Mr. Roach or Mr. Kopyto."

With that, the matter was adjourned to a date to be fixed.

Mr. Kopyto, 41, and Ms. Codina, 29, are associates, but maintain separate practices, albeit out of the same Bay St. offices.

He maintained in an interview that the Law Society would be satisfied if it succeeded in driving him out of the practice of law, and not Ms. Codina.

"They obviously feel I'm a bad influence on her," he said with a laugh. "They think she can be saved."

The abuse of process application was to have started the previous day, but when the couple arrived at Osgoode Hall they were told their case wouldn't be reached that day.

In addition, the couple were told by panel chairman Lee Ferrier that he was disqualifying himself from the case, although he declined to reveal the reasons.

For the benefit of reporters and television crews, Mr. Kopyto gave an interview outside Osgoode Hall that day, accusing the society of trying to



Toronto lawyer Harry Kopyto: Dismisses charges as "Mickey Mouse."

stop him from representing "black people, poor people."

The "rulers" of the society have in the past acted for institutions such as banks and police forces, which he has fought against for years, he said.

"Do you think I can get a fair hearing from them? I doubt it very much," he said.

"None of these charges are substantially true," Mr. Kopyto added. "They [the society] have distorted what happened."

With that, Mr. Kopyto and Ms. Codina—clad in a full-length fur coat—strode off together, to steel themselves for their continued fight against the legal Establishment.

Harry Kopyto Defence Committee

372 Bay Street, Suite 1708

Toronto, Ontario M5H 2W9 (416) 361-1404



Dear Friend:

March 1988

Harry Kopyto is under attack again. Fresh from his victory in defending himself on charges of scandalizing the Courts, he now faces harrassment from the Law Society.

Both Harry and his associate, Angie Codina, who co-defended Harry on his contempt charge, have been targeted for harrassment on a series of charges by the Law Society including the charges which he was acquitted for. In a sensational revelation, the Law Society revealed its true purpose in harrassing Kopyto and Codina when an internal memorandum revealed that they would accept "a suspension for Codina" in return for "a resignation by Kopyto". The August 28, 1987 memorandum went on to say that "with Kopyto out of Codina's professional life, she wouldn't be subject to the same pressures and she would cease being a discipline problem".

Further information concerning the campaign of harrassment by the Law Society against Kopyto are contained in the enclosed newspaper clippings. However, the elitist Law Society, which is dominated by establishment lawyers has been embarrassed by Harry's important victories in the past, often revealing startling deficiencies in the judicial system. Now they want to stop him from fighting future legal battles on behalf of the disabled, workers, tenants, minority group members, women, prisoners and political activists.

The Law Society hearings are scheduled to commence May 30th. Five days have been set aside for hearings. Kopyto and Codina will be challenging the charges on the grounds that they constitute an abuse of process and harrassment.

Thousands of dollars are needed to help defray the expenses associated with Kopyto's and Codina's defence. The Law Society has virtually endless resources.

A fund-raising benefit evening is being planned at the home of Charles and Hetty Roach in May 1988 prior to the Law Society hearings. The evening will feature entertainment and a buffet. We will be sending you tickets and further information regarding this evening in the near future.

In the meantime, we wish to invite you to a party being sponsored by the Defence Committee on Saturday, March 19th at Harry Kopyto's home starting at 8:00 p.m. Further information is available on the leaflet enclosed. We hope you will take the time to drop in

and renew old friends as well as make new ones.

In the meantime, any contribution which you can make to help defray costs involved in Harry's defence would be appreciated. Funds may be sent to the Committee c/o the address on our letterhead.

We are grateful for your past support and for your on-going solidarity. See you on March 19th!

Sincerely,

Mary-Joyce Stone

Mary-Joyce Stone
Chairperson
Harry Kopyto Defence Committee

Harry Kopyto Defence Committee

372 Bay Street, Suite 1708

Toronto, Ontario M5H 2W9 (416) 361-1404

Dear Friend,

May, 1988

On Monday May 30th at 9:30 a.m., the Law Society starts several days of hearings into complaints against Toronto human rights lawyer Harry Kopyto and his colleague, Angie Codina. Chief among the complaints is a charge against Harry Kopyto for saying that the courts and the police "stick together like Krazy-Glue".

This incredible persecution of Kopyto follows his unanimous acquittal by five judges of the Court of Appeal on identical charges in a decision which wiped out the criminal law of "scandalizing the court" last winter. But the legal elite which dominates the Law Society now seeks to achieve internally what it was unable to do through the criminal courts: to silence a consistent and vocal opponent within the legal profession through an astonishing campaign of harassment.

The Law Society has vague and undefined rules of conduct. It has already tried to drive Harry out of the profession by charging his colleague on entirely unrelated matters and then offering her a deal conditional on Kopyto's resignation as a lawyer. In a recent decision separating the identical challenges to the complaints by the two lawyers, the Society prejudged Kopyto's main argument by asserting that its internal processes ensured neutrality and fairness. This Discipline Committee has shown itself to be biased against Kopyto.

Harry has achieved important successes for working people, tenants, the disabled, minority group members, women, gays, prisoners, and victims of police abuse over the last fifteen years. He has succeeded in inspiring thousands of people across the country with his courage, determination, and refusal to be silenced. Now he needs our support.

On Saturday May 28th, 1988 at 8:00 p.m., Charles Roach, Harry's lawyer, and his wife Hetty have opened up their home to a fundraising benefit to help defray the considerable costs involved in the defence. As with the March 19th, 1988 benefit, which one hundred people attended, the evening will feature professional entertainment, a spectacular catered buffet, reports on the progress of the defence and a stimulating evening of discussion and meeting friends.

We ask you to come to show your support for Harry and the ongoing battle he is fighting on behalf of all of us.

Further information about the evening is available in the enclosed leaflet. Thank you for your past support and for your ongoing solidarity. See you on May 28th!

Sincerely,

Mary-Joyce Stone

Mary-Joyce Stone

Chairperson

Harry Kopyto Defence Committee

Ont. Law Society v. Harry Kopyto: the next instalment

By Rick Haliechuk

TORONTO—Like modern-day feuding Hatfields and McCoys, Toronto lawyer Harry Kopyto and the Law Society of Upper Canada have recently fired several more salvos in their long-standing war of words.

For its part, the Law Society has refined a complaint of professional misconduct brought against Mr. Kopyto, alleging, among other things, that he billed the Ontario Legal Aid Plan for more than 24 hours' work on a single day and billed for more than 1,000 phone calls on behalf of the same client during a 15-month period.

The Law Society alleges he is guilty of professional misconduct for deliberately submitting inflated accounts to Legal Aid during 1984, 1985 and 1986.

In response, Mr. Kopyto, the pit bull terrier of the legal profession, assailed the society for indulging in a public campaign to slander him.

Mr. Kopyto also faces a complaint of professional misconduct and conduct unbecoming a solicitor for saying in 1985 that the courts and police are so close, one would think they were "stuck together with Krazy Glue."

The recent events at the front can be summarized as follows:

□ On Jan. 30, a three-member discipline committee panel agreed with Mr. Kopyto's contention that it was a "court of competent jurisdiction" within the meaning of the Charter of Rights, to entertain a motion to strike down a Law Society rule.

The Law Society claims Mr. Kopyto's "Krazy Glue" and other comments violate Rule 11 of the rules of professional conduct.

Known as Rule 12 at the time of Mr. Kopyto's statements, the rule says a lawyer should encourage public respect for and try to improve the administration of justice.

The Law Society has retained Frank Marrocco of the Toronto firm of Marrocco, David and Trudell, to prosecute the complaint.

Mr. Marrocco argued that since the rule in question was passed by Convocation, only Convocation could rescind it.

Mr. Kopyto was represented at this hearing by Peter Rosenthal, a University of Toronto mathematics professor, who urged the committee to find that the rule has a "chilling effect" on free speech and is unconstitutional.

"This is the kind of political speech that has been of the gravest concern to those concerned about freedom of expression," Mr. Rosenthal maintained.

Other comments about a court



Toronto lawyer Harry Kopyto: Complaint "fantasy of a demented mind."

decision made by Mr. Kopyto which the Law Society alleges to be contrary to the rule include:

- "This is a mockery of justice";
- "It stinks to high hell";
- "We're wondering what is the point of appealing and continuing this charade of the courts in this country which are warped in favour of protecting the police."

Mr. Kopyto had delivered his critique after Toronto Provincial Court Judge Marvin Zuker had tossed out a lawsuit he brought against the RCMP on behalf of a client.

The Crown then laid a contempt of court charge against Mr. Kopyto,

who was convicted at trial; but on appeal the conviction was quashed, with three of five Court of Appeal judges ruling that Mr. Kopyto's comments were constitutionally protected.

□ On Feb. 10, Mr. Marrocco served notice that he was seeking judicial review in the Divisional Court of the committee's conclusion it can deal with the Charter arguments. This development did not appear to sit well with Mr. Kopyto.

"I think the Law Society is leaving no stone unturned to rid the world of Harry Kopyto," he charged.

Asked if the judicial review application appears to be a case of one arm of the Law Society battling with another, Mr. Kopyto would only say that "there are cracks in the edifice."

But Mr. Marrocco defended his decision to go to court.

"I think the Law Society needs to know whether a discipline committee can use the Charter to declare a rule passed by Convocation to be unconstitutional," he said.

□ On Feb. 3, it was revealed that the society had withdrawn a previous complaint against Mr. Kopyto about overbilling Legal Aid and replaced it

with a new one containing three cases of alleged professional misconduct.

In addition to the allegation that he deliberately submitted inflated accounts to Legal Aid, the Law Society also says Mr. Kopyto used the research of two Toronto lawyers for a court motion, after telling them he would use it to write an article for the *Globe and Mail*, and then tried to mislead the Law Society when it was investigating this allegation.

The Law Society provided 11 particulars to the Legal Aid over-billing complaint, including that Mr. Kopyto:

- billed Legal Aid for more than 24 billable hours on Dec. 4, 1986, excluding time billed for phone calls;
- billed the plan for more than 12 billable hours per day on 87 separate days between 1984 and 1986 excluding time billed for phone calls;
- repeatedly billed the plan for performing more than on task at the same time between 1984 and 1986;
- billed the plan for an average of 2 hours and 40 minutes of phone calls per day between 1984 and 1986;
- billed the plan for 9 days spent at court, court offices and government offices on Saturdays and Sundays, with none of the time being spent on Saturday appearances at bail hearings on criminal matters;
- submitted accounts to the plan

→ p. 2

from p. 1

Society v. Harry Kopyto: the next

for 1,092 phone calls for one client made between March 3, 1985 and May 21, 1986.

Details of this complaint appeared in Toronto newspapers on Feb. 4 and Feb. 5, in advance of a hearing before another Law Society discipline committee on Feb. 7.

□ On Feb. 7, Mr. Kopyto lashed out at Mr. Marrocco and the Law Society, accusing them of trying to slander him publicly.

As for the allegations, Mr. Kopyto said the complaint merely showed that he works very hard for his clients.

"It seems to me there's nothing that says a lawyer can't work more than 12 hours a day," an angry Mr. Kopyto charged. "Some of us take our clients more seriously than others, some of us have more energy."

He said that several of the particulars of the society's complaint do not disclose any conduct contrary to the rules, and he demanded he be provided with more precise particulars.

"If the accusation is that I work hard, I want to know that," he said. "Give me a charge that I can face."

Mr. Kopyto also said Mr. Marrocco leaked details of the complaint to the media before it was presented to the committee.

"They're facts Mr. Marrocco has designed to put into a press release, designed to slander me," he charged.

Charles Roach, counsel for Mr. Kopyto, said while it's true his client

likes to be open about things, that was still no reason for the Law Society to disseminate information which suggests Mr. Kopyto is guilty of fraud or embezzlement.

Mr. Roach urged the committee to censure the Law Society's conduct.

The panel—comprised of lawyers Helen MacLeod of Kingston and Rino Bragagnolo of Timmins, and lay Benchers June Callwood—questioned Mr. Marrocco about how the material came to find its way into the media first.

Mr. Marrocco said that since it was merely a revision of a complaint that had been earlier tendered at a public



Law Society lawyer Frank Marrocco: Not harbouring grudge against him.

discipline committee hearing, the new complaint was a public document.

He said it was not unusual for details of a complaint to be published before a hearing, although it depends "on how interested the media are in a particular case."

Mr. Marrocco said the Law Society had no interest in conducting a witch hunt against Mr. Kopyto.

"We're not harbouring grudges against anyone," he said.

The committee decided it couldn't censure Mr. Marrocco or anyone else at the Law Society.

And it also declined to deal with Mr. Kopyto's demand that some of the particulars be tossed out, ruling that would be dealt with by the committee which becomes seized with hearing the complaint, on the basis of evidence presented to it.

This decision further angered Mr. Kopyto.

"Save me the hassles, save me the headache, save me calling dozens of witnesses," he implored.

In an interview, Mr. Kopyto characterized the complaint as the "fantasy of a demented mind."

"You can't make a living off Legal Aid, never mind rip it off," he said.

□ On March 6, the protagonists are next scheduled to do battle and Mr. Kopyto is expected to present his argument that the Law Society cannot both prosecute and try lawyers accused of violating rules of conduct.

Kopyto kicks the establishment



HARRY KOPYTO: Toronto lawyer faces accusation of fraud by the Law Society of Upper Canada.

By Rick Haliechuk Toronto Star

When last heard from, Toronto lawyer Harry Kopyto was storming out of an inquest into the death of a man in Metro police custody, vowing to start his own inquest to get justice for the family of the dead man.

The inquest last fall was vintage Kopyto: Attacks on the police, sharp exchanges with other lawyers, arguments with the coroner, making demands, making accusations.

Kopyto revels in kicking the shins of the establishment, be it the police, the courts, the government or the Law Society of Upper Canada, the august body which regulates Ontario's lawyers.

To his supporters, he's the champion of lost causes, the lawyer who will take up the case of a man trying to sue the police or the welfare mother facing eviction from her home.

To his detractors, Kopyto is a self-promoting charlatan, who uses bombast to obscure his shortcomings as a lawyer.

He is perhaps best known for having been charged with the offence of scandalizing the court after saying, among other things, that the courts were biased in favor of the police.

Although he was convicted at trial, the Ontario Court of Appeal later quashed the conviction, declaring that, as offensive as Kopyto's views may have been to some, he had the constitutional right to express them.

Now, Kopyto faces serious allegations brought by the law society that he deliberately submitted inflated bills to the Ontario Legal Aid Plan; the allegations amount to an accusation of fraud.

True to form, Kopyto has dismissed the charges as the "fantasy of a demented mind."

"You can't make a living off legal aid, never mind rip it off," he fumes.

But as revealed in a recent interview in the unfashionable Bay St. building where he maintains his office, there is a deadly serious side to Kopyto, who describes himself variously as a "revolutionary" and a "humanist-Marxist."

"My practice is a political weapon, it's not a way of making a living," he declares.

Kopyto, 42, rattles off several types of clients he's represented in his 15 years of practising law: prison inmates, members of minority groups, gays, mentally handicapped, the poor.

'A little hope'

Kopyto says he has dedicated his legal life to helping the dispossessed and the under-represented in their struggles against the rich and powerful.

"On my death bed, I'll be happy to know I gave people a little hope that they can fight for justice, and, that I gave wealthy people a few sleepless nights."

During his fight against the contempt charge three years ago, Kopyto was supported by many lawyers and civil libertarians, upset with what they said was an attempt by Attorney-General Ian Scott to use the criminal law to muzzle criticism of courts and judges.

It appeared, however, that many came to his defence while figuratively holding their noses, as if to say the concept of free speech was important, but the things Kopyto said were awful.

from
p. 1

in the shins

Alternately sitting behind his desk and pacing across the floor of his office, Kopyto stressed in the interview with The Star that he believes the perceived values of the adversarial court system are a myth.

Far from being a means by which people can obtain justice, the basic function of the system is to compel people to compromise themselves, he argues.

Kopyto is contemptuous of the reliance judges and lawyers place on precedents — previously decided cases — dismissing it all as mere gobbledygook.

Judges, he says, are just like other people and make decisions based on their "gut reactions."

In a complaint issued late last month, the law society says Kopyto is guilty of professional misconduct for deliberately submitting inflated accounts to the Legal Aid Plan during the years 1984 to 1986.

Among the allegations, the law society says Kopyto:

□ Billed the plan for more than 24 hours' work on a single day;

□ Billed the plan for more than 12 hours' work on 87 days between 1984 and 1986;

□ Billed for over 1,000 phone calls made on behalf of a single client in a 15-month period.

If convicted on the discipline charge, he could be disbarred.

Kopyto says that, as a result of the law society investigation, some of his legal aid accounts have been frozen, and he claims the plan owes him about \$50,000 for work he did between 1984

and 1986.

Under legal aid, an indigent client is issued a legal aid certificate which he can use to retain a lawyer, who agrees to bill the plan at rates which vary with the services provided.

Legal aid is Kopyto's financial lifeline, since it makes up nearly 90 per cent of all the work he does.

He is separated from his wife, and makes support payments for his two children but says he doesn't pay rent for his office space, thanks to the generosity of his associate, Angie Codina.

"I didn't go into law to make money, I went into law because I had no choice, because I was called upon by my conscience," he says.

There is more to Kopyto than just law and his fight with the legal establishment.

He's an active member of the Left Caucus, a left-wing group within the New Democratic Party; Kopyto lays the blame for the party's dismal showing in last year's federal election squarely with leader Ed Broadbent.

"I'm going to be dedicating the next 5½ months to help build a team that can replace Broadbent and those equally responsible for betraying the party."

After 15 years of almost non-stop verbal combat, Kopyto admits it's starting to wear him down.

"Sometimes I feel like a giant magnifying glass and all the heat is concentrated on me," he says. "I'm beginning to go through the wringer."

"I realized when I went into law it would only be a matter of time before the law society would be out to get me."

A FUND RAISING PARTY

TO RALLY BEHIND

HARRY KOPYTO AND ANGIE CODINA
In their on going struggle against harassment by the
Law Society of Upper Canada

REPORTS FROM: **CHARLES ROACH**
HARRY KOPYTO

WHEN: : **SAT. APRIL 29, 1989**
8:00pm

WHERE: : **211 Dunvegan Rd.**
2 West of Ave., Rd. North
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WHAT: : **An evening of relaxed**
conversation, original
entertainment, spectacular
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WHY: : **To meet old friends,**
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Speak No Evil

When Harry Kopyto told a reporter the law courts and the RCMP were sticking together like Krazy Glue, he was prosecuted for "scandalizing"

BY JEFFREY MILLER

Do the guarantees of freedom of expression now embodied in the Canadian Charter of Rights and Freedoms include the right to speak out against the law itself — question verdicts, slang judges, criticize the conduct of the courts or the workings of the justice system? According to a recent notorious prosecution, Her Majesty the Queen against Harry Kopyto, the answer is maybe. But then again, maybe not.

Harry Kopyto is the first to admit that he is not a lawyer in the gentleman-barrister tradition of, say, a John Sopinka or a J.J. Robinette. A Jew born in a German displaced-persons camp just after the Holocaust, Kopyto lives fiercely and vociferously by the notion that he was called to the practice of law on behalf of immigrants, the poor, gays, people of colour, the left-of-centre, the disaffected.

In 1978, this voluble defender of underdogs took up the case of one Ross Dowson, an executive of the League for Socialist Action, who believed that the RCMP had schemed to make him lose his League position. Kopyto filed a defamation suit against the Mounties, an action that flopped and fumbled its way right up to the Supreme Court of Canada, which refused to hear it. Attempts at criminal prosecution were similarly unsuccessful. Finally, Kopyto resorted to Small Claims Court, with its last-chance ceiling of \$3,000 on damage awards. By this time, he had been moiling away on Dowson's behalf for eight years. When he was told his case couldn't be litigated because too much time had elapsed before the claim was filed, Kopyto headed full steam for the court of public opinion.

"This decision is a mockery of justice," he told Kirk Makin of *The Globe and Mail*, who duly reported his words to Canada the next day. "It stinks to high hell. . . . Mr. Dowson and I have lost faith in the judicial system to render justice. We're wondering what is the point of appealing and continuing this charade of the courts in this country which are warped in favour of protecting the police." Then came the clincher: "The courts and the RCMP are sticking so close



The Ontario Supreme Court told Kopyto he could not practise in the courts until he had apologized to all the judges in the province

together," Kopyto said, "you'd think they were put together with Krazy Glue."

That was on December 17, 1985. Shortly thereafter, the Ontario attorney general brought charges against Kopyto for "scandalizing the court."

A quaint British import, "scandalizing" is a judge-made extension of the criminal law of contempt. The intent is to maintain popular confidence in the justice system. According to the so-called leading case on the subject, tried in Birmingham, England, in 1900, an accused scandalizes a court by deliberate acts or words that "lower its authority" among the public. While it

might be healthy to criticize the established system, the reasoning goes, at a certain point such criticism becomes tantamount to seditious harangue: if the populace finds the abuse convincing, it may revolt against the social order.

The British themselves now dispute the reasoning and haven't successfully prosecuted a case of scandalizing for almost sixty years. The Supreme Court of the United States has rejected the whole idea as "English foolishness." Canada, on the other hand, may well hold the modern record in the free world for scandalizing prosecutions. Of the better-known recent cases, in 1970 journalist Allan Fotheringham was accused of scandalizing a coroner's court but was acquitted, and in 1971 Manitoba highways minister Joe Borowski (more lately famous for sponsoring anti-abortion litigation) was convicted after he remarked in a radio interview that a judge had shown political bias in a case that was "an insult to Canadian justice." Both prosecutions, of course, predated the Charter with its guarantees of free speech.

When Harry Kopyto was tried in the Supreme Court of Ontario during the fall of 1986, some of the most prominent criminal-defence lawyers in the country worked on his case free of charge, and the Criminal Lawyers' Association fought for and won special intervener status. They were not especially interested in Kopyto's personal predicament. The view among barristers in general was that, in bringing the scandalizing charge against a criminal-defence lawyer, the attorney general was compromising both counsels' ability to defend clients as they saw fit and their right as professionals to hold the justice system publicly accountable.

Still, Supreme Court judge Robert Montgomery found Kopyto's comments contemptuous: not only did they embody "a vitriolic, unmitigated attack" on the small-claims judge but the Crazy Glue remark was "a blatant attack on all judges of all courts . . . likely to lower the authority of the court and its respect in the public eye." After hearing from the Crown that a jail term would only make Kopyto a martyr, Mr. Justice Montgomery forbade him to practise in the courts until he had apologized to all the judges of the province.

Kopyto's lawyers immediately filed an appeal, and a year later, on November 27, 1987, a special five-judge panel of the Ontario Court of Appeal unanimously overturned his conviction. Kopyto told the press, "It's a victory for the legal profession, it's a victory for the public, and it's a victory for freedom of speech."

It wasn't quite so clear cut.

True, a majority of three judges held that, as currently prosecuted, "scandalizing the court" violated freedom of expression as guaranteed by the Charter of Rights and Freedoms. But in effect, judge by judge and finding by finding, the appeal court performed a cautious — typically Canadian — balancing act between the British common-law tradition from which the charge stemmed and the American constitutional system whose liberal spirit and outlook pervade the Charter.

All five justices seem to have found at least some of Kopyto's published remarks repugnant. Mr. Justice Peter de Carteret Cory characterized them as a "puerile manifestation of petulant pique" and "no more than the whining of an unhappy loser . . . in

rights to freedom of speech be justified.

In an excited fifty-nine-page dissent, Mr. Justice Charles Dubin argued that, while the Crown had not proved Kopyto guilty of scandalizing, the offence was constitutional just as it stood. (Mr. Justice Brooke agreed without writing his own reasons.) While a dissent by nature has no legal weight, the forcefulness in this case, and the country-wide respect Dubin and Brooke enjoy, could sway future prosecutions and even inspire legislation. Much of our recent family law, after all, started out as dissenting judgments written by Bora Laskin.

Mr. Justice Cory had argued that "the courts are not fragile flowers that will wither in the hot heat of controversy." In putting the case for the status quo, Dubin wrote that this was "trite": the wrong of scandalizing had to do not with the dignity of a specific court or judge but with the orderly and peaceful progress of society under the rule of law.

American society was cruder than ours, Dubin implied, remarking twice that his "colleagues have purported to follow American precedent in preference to longstanding precedent in the United Kingdom, in Canada, throughout the Commonwealth and to that of the European Convention on Human Rights." Our rule of law, he said, "is patterned on but not identical to that of the United Kingdom and other Commonwealth countries. With respect to my learned colleagues, I prefer to follow these more civilized standards."

Paradoxically, one page later His Lordship admitted that his view of scandalizing required an American-style "clear and present danger" test, much as did the majority view: the Crown had not shown Kopyto's words were meant to pose an imminent, substantial danger, so Kopyto could not be convicted. And irony upon paradox, Dubin ended his weighty opinion with a five-page quotation of, yes, *American authorities*, extraordinarily showing why Harry Kopyto, though not guilty, should be subject to discipline proceedings by the Law Society of Upper Canada.

It is true that in the United States, the judges who aren't politically appointed are elected and answerable to the voters. In either case, they're subject to the same disrespect as any other public official. In America, if it takes your fancy, it is almost a public duty to bad-mouth the local magistrate. In Canada as in England, symbolically at least, judges have retained the majesty that accrued to them when adjudicating had strictly divine roots, all law supposedly being God-given. They don't wear horsehair wigs any more, but they remain "Their Lordships," and many of them still

One Appeal Court judge contended that the scandalizing charge could not be squared with the Charter guarantees of freedom of speech

a word, disgraceful." And all five agreed that, before the Charter of Rights was appended to the newly patriated constitution in 1982, Kopyto would have been guilty of the offence.

Where the justices differed was on whether the Charter had now absolutely rendered the scandalizing charge unconstitutional — in effect, on the extent to which "disgraceful" speech was protected.

Only one member of the court, Mr. Justice Lloyd Houlden, held that scandalizing could not subsist with the Charter, or survive in a constitutional democracy at all, no matter how it was framed. The other four justices held that the offence could be made compatible with the Charter guarantees if it were redefined. Under the new definition, the Crown would have to bring proof that the offending words or actions genuinely and imminently threatened to provoke public rebellion against law and order. Only in such cases — constituting what U.S. law calls "a clear and present danger" to the social fabric — would the abridgment of

regard themselves as the priestly — if underappreciated — guardians of the social order. Overworked and underpaid, Canadian judges are obliged to live sequestered, unblemished lives, a state of affairs apt to make them feel inhibited and defenceless, especially when the law of contempt is weakened. From where they sit, a constitutional view that accords lawyers unlimited freedom to try their cases on the six o'clock news and in the morning papers, to second-guess and abuse the already beleaguered courts, inspires visions of Armageddon.

According to the majority in *Kopyto*, scandalizing prosecutions could — like prosecutions for sedition or for the deliberate promotion of racial hatred — proceed under the one-sentence opening section of

The idea of lawyers' having unlimited freedom to try their cases on the six o'clock news inspires in Canadian judges Armageddon visions

the Charter which allows "such reasonable limits" on its guarantees as are "demonstrably justified in a free and democratic society." The section is, in effect, an override.

Still, *Kopyto* does represent some movement towards the American view, in that high-level judges argued that in a constitutional democracy it should be an article of faith that the courts can survive, and even profit by, the blow of mere words. But the ambiguity remains: on one hand, *Kopyto* says that if we act in good faith, with no manifest desire to foment sedition and unrest, our new constitution allows us to say what we will — for example, that the police and the courts are in bed together; on the other hand, it rules that, if Parliament uses clever enough language, it can skirt the spirit of the Charter and thereby outlaw what might be far more important and telling criticisms.

The attorney general of Ontario has not appealed *Kopyto* to the federal supreme court. At the moment, in Canada, it stands as the leading case on scandalizing. ~

Today's quote



"I feel like a Jew in the Inquisition. I'm being persecuted by a Star Chamber."

—Maverick lawyer Harry Kopyto, going before the law society's discipline committee, accused of "a funda-

Kopyto accuses law society of campaign to slander him

By Rick

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Discipline urged for Kopyto over his behavior at inquest

Contempt case puts courts on trial

BY DREW FAGAN
The Globe and Mail

The trial of outsp

Harry Kopyto
Legal Aid Plan

A14 THE GLOBE AND MAIL, TUESDAY, MAY 16, 1987

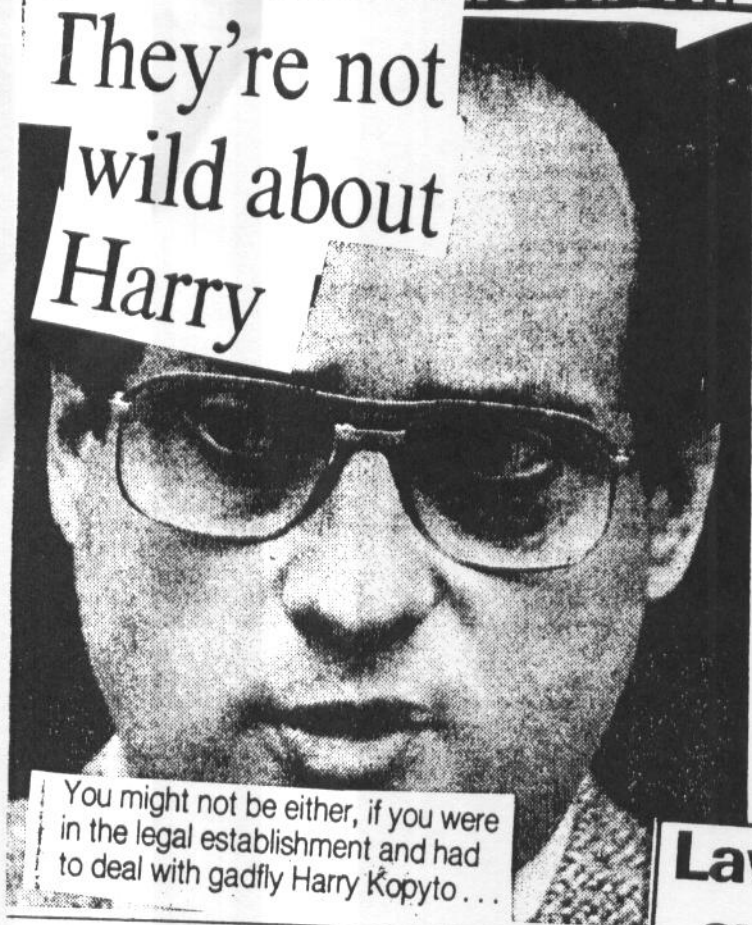
A20 THE TORONTO STAR, MONDAY, NOVEMBER 30, 1987

now interested the media are in a particular case," Marrocco

Kopyto set to face law society charges

VITRIOLIC HATRED

They're not
wild about
Harry



You might not be either, if you were
in the legal establishment and had
to deal with gadfly Harry Kopyto...

Kopyto scores 1st-round victory in law society fig-

By Rick Haliechuk Toronto Star
Toronto lawyers Harry Kopyto and Angie Codina scored a preliminary victory yesterday in their battle with the Law Society of Upper Canada, which has accused them of professional misconduct.

After three hours of legal wrangling, a three-member law society discipline panel agreed with the two lawyers that law society staff should have summonses to four with

Canadian immigration tions.

Kopyto and Codina subpoena senior disciplinel Stephen Sherriff, counsel Reg Watson and law society treasurer Genest and Arthur Sc

Patrick Wilson, an investigator hired by the defence team, told the h

THE TORO

Rebel fears law society conspiracy

By IAN ROBERTSON
Toronto Sun

Metro lawyer Harry Kopyto says he won't get a fair deal from the Law Society of Upper Canada at a hearing Tuesday.

But a society official last night called Kopyto's charge "totally wrong."

Kopyto, 41, says there is a conspiracy by Ontario's top lawyers and judges to disbar him because of his anti-establishment attitude.

Kopyto vows to subpoena senior judges for own case

By Rick Haliechuk Toronto Star

Toronto lawyer Harry Kopyto says he will subpoena Supreme Court judges for evidence if the Law Society of Upper Canada doesn't say it intends to disbar him for professional misconduct.

Kopyto is licensed that the society intends to use confidential information by the judges at



Lawyer suing Society official

THE TORONTO STAR, SATURDAY, FEBRUARY 11, 1989 /B

Law society challenges its own ruling in Kopyto case

By Rick Haliechuk Toronto Star

The governing body of Ontario's legal profession appears to be fighting itself over how to deal with a radical Toronto lawyer Harry Kopyto.

BY



Civil rights lawyer vows to fight on despite hardships

By Elizabeth Payne
Citizen staff writer

A Toronto civil rights law

Law society complaints harassment Kopyto say

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The law society committee is hearing a complaint that Mr. Kopyto "is guilty of professional misconduct and unbecoming a barrister." The committee rules against him and he could be reprimanded or disbarred.

Mr. Kopyto says the law society complaints are politically motivated because he is a radical who challenges the establishment. In its complaint, the society says Kopyto was convicted from a judgment of the Court of Appeal that set aside his conviction of scandalizing the court. Mr. Kopyto had been convicted of scandalizing the court in 1984.



Law Society to hear Kopyto misconduct complaint

Lawyer uses Charter to fight law society

Toronto lawyer Harry Kopyto is using the Charter of Rights and Freedoms to challenge the right of the Law Society of Upper Canada to discipline him. In a motion filed with the Divisional Court, Kopyto asks that the charges he is facing before the law society's disciplinary committee be dismissed.

Law society accused of picking on lawyer

By Rick Haliechuk Toronto Star

A Toronto lawyer was treated differently than others facing discipline proceedings because of her association with lawyer Harry Kopyto, a law society hearing has been told.

tes the Charter of Rights and Freedoms.

He was ordered to pay for his costs. Kopyto was complained in a hearing that Canada's CMP are sticking to their guns. He also said he has lost faith in the system to render justice. "It is a mockery of high hell." The remarks in his lawsuit he had filed against the CMP on behalf of the judge who concluded the

ment of Codina with that of 35 lawyers who, he said, had violated the confidentiality of medical records and faced no action.

Codina was further influenced because of the "spousal relationship, if I can call it that, between the two of you at that time," Sheriff testified.

REBEL ATTORNEY

Law body faces test on rights

Law society cautioned on Kopyto memo shows

By Rick Haliechuk Toronto Star

The Law Society of Upper Canada was warned two years ago it

discipline hearing as a "kangaroo court."

"My ultimate goal is to have the charges against me dismissed by divisional court," Kopyto said. "If they don't dismiss the charges, I want an independent tribunal."

Kopyto argued it would be a violation of Section 7 of the Charter of Rights unless the discipline procedure is changed "so that those who charge me are not those who try me."

Kopyto also says the Law Society's charges are vague and indefinite.

Hugh Guthrie, head of the discipline committee, agreed to delay the hearing until Dec. 20. Kopyto will be tried then if his divisional court case is not yet ready.

→ P.2 - May 18/89

from p. 1 - May 18/89

Law society wants him out of business Kopyto charges

By Rick Hallechuk
Toronto Star

Toronto lawyer Harry Kopyto accused the Law Society of Upper Canada yesterday of trying to drive him out of business.

Kopyto, who last week had a contempt of court conviction overturned by the Ontario Court of Appeal, told reporters outside Osgoode Hall that the law society is harassing him with professional misconduct charges to prevent him from representing "black peo-



Kopyto cites 'guilt by association' as colleague charged by law body

BY LINDA McQUAIG
The Globe and Mail

SDAY, MARCH 6, 1989

Law society officials were

Law body overrules Kopyto's challenge to discipline powers

Disciplinary proceedings against Kopyto to resume

The Globe and Mail

Disciplinary proceedings by the Law Society of Upper Canada against renegade lawyer Harry Kopyto began yesterday but were quickly adjourned after the chairman of the three-member discipline committee disqualified himself.

The hearings were to resume this morning with a lawyer for Mr. Kopyto and his associate Angie Codina arguing that the proceedings breach guarantees in the Charter of Rights and Freedoms.

Mr. Kopyto faces allegations that he plagiarized another lawyer's work, misled law society investigators, surreptitiously



Kopyto files complaint over 'creed'

Toronto lawyer Harry Kopyto says the Law Society of Upper Canada is discriminating against him because of his "revolutionary" attitudes.

The controversial lawyer, who has described himself as a "humanist-Marxist" has filed a complaint with the Ontario Human Rights Commission saying he is being discriminated against because of this creed.

Harry Kopyto Defence Committee

372 Bay Street, Suite 1708

Toronto, Ontario M5H 2W9 (416) 361-1404

JUNE, 1989



Dear Friends,

The Law Society of Upper Canada's campaign to drive Harry Kopyto out of the legal profession is reaching a crescendo with four days of hearings scheduled to start on Tuesday June 13, 1989. Public support is needed at the hearing, scheduled to start at 9:30 a.m. at the Law Society's "Discipline Room" at Osgoode Hall (north east corner of Queen and University Avenue). A picket line will be mounted in front of the Law Society (east side) entrance from 9:30 a.m. to 10:30 a.m.. Be there to show your support!

The June 13th hearings are a culmination of several years of harassment against Harry Kopyto which has threatened to drive him into bankruptcy and to divert his efforts to extend the rights of those whose cases he has defended fearlessly over the years -- constituencies which include the physically and emotionally disabled, trade unionists, victims of police abuse, members of various minorities, women, gays, prisoners, and tenants.

The Law Society's harassment of Kopyto and his associate Angie Codina has involved the following:

1. A formal finding of abuse of process against Law Society officials who refused to issue subpoenas which Kopyto had requested using the normal channels.
2. A joint deal offered to Codina and Kopyto even though they face totally unrelated charges in which the Law Society sought to buy Kopyto's resignation in return for favourable treatment for Codina.
3. Charging Kopyto with misconduct after his acquittal by the Court of Appeal for his well known "crazy-glue" statement. The unanimous decision of the five Court of Appeal Judges has become widely recognized as dealing the offense of "scandalizing the court" a fatal blow. The Law Society, however, still seeks Kopyto's suspension for six months.
4. Launching a massive investigation of over eight thousand hours of service billed by Kopyto over a three year period. Errors were found in approximately one percent of these billings. Kopyto says the work was done notwithstanding errors in his accounts. The Law Society has yet to specify what services, if any, he did not perform.
5. A protest by a Law Society accountant that an audit of Harry Kopyto's associate, Angie Codina, violated Angie Codina's and her clients' privilege and was used for ulterior purposes.

The Chairman of the Discipline Board Kopyto will face on June 13th will be none other than the infamous Ian Outerbridge, a lawyer whose trust account became an exit route for 3.25 million dollars siphoned into a Swiss bank account by Outerbridge on behalf of notorious financier Leonard Rosenberg in the infamous Greymac Trust scam. While Ian Outerbridge was defending and representing Dow Chemical in the early 1970s, Kopyto was protesting the presence of the napalm-producing company's recruiters sent onto the U of T's campus. Outerbridge's escapades include defending well-known polluters who have placed the value of profits above human health such as Canada Metal Company and Toronto Refineries and Smelters. His claim to fame includes default on a \$150,000.00 judgment issued against him by a U.S. court as well as a long and faithful history as a dependable hatchetman for the Law Society establishment.

Those of us who know Harry Kopyto as clients or friends are well aware of his virtually limitless energy and his near-total dedication to his clientele. We are aware of the reservoir of compassion and selflessness which motivates him. We are aware that he is one of a tiny handful of lawyers with his experience and abilities who forgoes private retainers to perform a public service by representing legally-aided clientele.

The lines are now sharply drawn. Kopyto faces a legal establishment whose fundamental interests lie in silencing one of their most fearless critics. More than ever before our physical presence is necessary in order to protect and defend not only Harry's rights but our own.

Circle June 13th on your calendar now. It is a day when those who have felt the sting of the law should mobilize to protect one of us being victimized for standing by his principles. And help with a contribution to the Harry Kopyto Defence Fund to assist in reducing his soaring legal costs.

Mary-Joyce Stone
Mary-Joyce Stone

Chairperson,
Harry Kopyto Defence Committee

HARRY KOPYTO, LL.B.
BARRISTERS & SOLICITORS
HARRY KOPYTO, LL.B.
SILVANO A. DEL RIO, B.A., B.E.O., LL.B.
372 BAY STREET, SUITE 1708
TORONTO, ONTARIO M5H 2W9

June 28, 1989

Mr. Justice Hughes
Royal Commission of Inquiry into the
Response by the Criminal Justice System to Complaints
Prince Charles Building
120 Torbay Road
P.O. Box 9838
St. John's, Newfoundland
A1A 4J7

Dear Sir:

We are the victims of the Mount Cashel Orphanage. We were the ones who were treated with disdain when we raised our voices to protest against the brutalization of our bodies in 1975 and 1976. We are the ones who were ignored by the Royal Newfoundland Constabulary when we told the truth. We are the ones who were abandoned by the Department of Social Services which had the obligation to ensure our welfare. We are the ones who were deserted in an institution by the Director of Child Welfare who shut his eyes to our fates. We are the ones who were ignored, lied to, abandoned, deceived, frustrated, brutalized, sodomized, tortured and treated with less respect than some people treat their pets.

But we will no longer be silent. We will no longer rely on members of the generation that ignored us in the past to solve our current problems. The health and welfare of the children of Canada is too important to be left in the hands of others to protect.

We demand the right to be heard. We want full legal status before this commission and before all other bodies which presume to investigate our fate and to determine our future.

Many of us were not always silent. Many of us tried to tell the authorities the truth. Many of us provided affidavits to the police. Many of us complained to adults regarding our treatment but we were always ignored. We were always tricked into silence. We were always trapped by our guilt. We were always made to feel that we were the cause of our own problems. We were always forced to submit to a world of authority in which our welfare, in which respect for our rights, in which willingness to listen to us, was always the lowest priority.

We wish to announce to this Royal Commission, to the people of the province of Newfoundland, to the parents of the world, to others who have suffered as victims of child abuse and to the public at large that we demand full legal status before all councils concerned with rectifying the injustice which has been done to us.

We are no longer begging to be heard. We are no longer on our knees asking for favours. We are no longer trapped by a network of deceit created by adults to silence us. We are no longer relying on others to protect us. We are no longer willing to accept blame and responsibility for what others have done to us.

Unfortunately, we have been advised that the Royal Commission has responded through counsel somewhat critically to a request of our counsel, Mr. Harry Kopyto, to have the Commission pay the costs of our legal representation before it. We agree with him that if this Commission does not agree to fund our counsel, that the coverup has already begun. The generation that abused us now has a responsibility to ensure that we have effective legal counsel to represent us aggressively, to defend our interest before the Commission and to ensure that all relevant witnesses and all relevant questions, even the most difficult ones which might point to responsibility by senior political leaders are asked.

If we are to be given effective status, that means that we must also be given the means of participating fully in the deliberations of this Commission.

We know that there may be many factors to be considered in determining whether or not the Commission should pay for counsel for a person given status. We ask this Commission to recognize however that we are not just another interested party. We are the persons whose lives have been destroyed. We are the persons whose means of earning a living has been curtailed by

systematic abuse. None of us is wealthy. None of us has the means of paying for a lawyer. If this Commission is to begin to rebuild the trust which has to exist between adult and child, between enforcer of the law and victim of a law that was not enforced, then it is essential that the Commission begin by permitting us effective participation now.

Yours very truly,

Shane Michael Earle	St. John's, Newfoundland
Robert Michael Connors	Kitchener, Ontario
Gregory Patrick Connors	Scarborough, Ontario
Gerard Brenston	2166 East 42nd Avenue Vancouver, British Columbia V5P 1L8
William Ronald Earle	35 Flower Hill St. John's, Newfoundland A1C 4M2

per:

Harry Kopyto
Barrister & Solicitor
Suite 1708
372 Bay Street
Toronto, Ontario
M5H 2W9

PRESS RELEASE

We are the victims of Mount Cashel. We are the ones whose bodies have been abused, whose minds have been tortured, whose voices have been ignored and whose childhood has been stolen.

But after years of suppression and silence, we are standing up and speaking out. Our decision has not been made lightly.

We are speaking out because we believe that the time has come for society to understand and accept its responsibility to children who are subject to physical and emotional abuse as we have been. We are speaking out for the tens of thousands of others who have remained silent. We are speaking out for the dozens of our brothers and sisters who still have yet to find their voice, muted so long by fear, shame and self-hatred. We are speaking out for the children of Canada in the hopes that our voices will help prevent the unspeakable horrors that have been inflicted upon us. Though we cannot erase the past, we hope to be able to rewrite the future for those too weak and young to defend themselves. We are speaking out not only for those in public institutions who have been and presently are and in the future will be subjected to the same kind of treatment which we received but also for the thousands who are trapped in the private hells of their families, unable to escape the abuse to which they are subjected, often on a daily basis.

The time has come for victims of sexual abuse to unite in a national organization. We however are calling upon the public to join us in our common endeavor to make Canada a safe place for children to be raised. While our immediate goals are to ensure that our voices will be heard at the Commission of Inquiry established by the Government of Newfoundland to review the failure of the criminal justice system to respond to our pleas in the 1970s when we were all victims of physical and sexual abuse

at the Mount Cashel orphanage in St. John's, Newfoundland, we are also calling upon the public to support the creation of a national organization and to provide us with financial contributions and statements of moral support to ensure that the following additional goals are achieved:

1. To obtain moral support and public endorsement for the efforts of the victims of Mount Cashel to obtain full compensation.
2. To raise child abuse issues before the public through a newsletter, promotion of discussion of the causes of child abuse, creation of an atmosphere which prevents the degradation of women and children and moral support for victims and families so that they will be able to understand the nature and the underlying causes of child abuse.
3. To promote legal reform including more effective means of enforcement of laws against child abuse and provision of support services to children who have been subjected to child abuse including the monitoring of court actions and recommending measures designed to heighten public awareness and superintendence of the functioning of the judicial system with respect to children subject to abuse.

We call upon all members of the public, parents, educators, child education specialists, advocates of children's rights, other victims of child abuse, and all other persons and organizations which have a stake in the health of Canada's children to endorse our statement of purpose, to provide funds to the **Justice for Victims of Mount Cashel Trust Fund**, P.O. Box 642, Station C, St. John's, Newfoundland A1C 5K8 and to give us their active support.

(signed)

HARRY KOPYO
Barrister & Solicitor
Toronto, Ontario

on behalf of:

Shane Michael Earle St. John's, Newfoundland

Robert Michael Connors Kitchener, Ontario

Gregory Patrick Connors Scarborough, Ontario

Gerard Brenston Vancouver, British Columbia

William Ronald Earle St. John's, Newfoundland

For further information contact Harry Kopyto at (416) or Shane Earle at (709).

JUSTICE FOR VICTIMS OF MOUNT CASHEL

Statement of Purpose

As concerned citizens of Canada, we are deeply disturbed by the failure of the judicial, political and social service networks of the Province of Newfoundland to stop the systematic sexual abuse and physical brutality directed against children placed in the facilities of Mount Cashel orphanage in the 1970's and thereafter. The overwhelming evidence indicates that the Department of Justice, the Royal Newfoundland Constabulary, the Director of Child Welfare, the Department of Social Services and other public institutions failed to heed the pleas for justice of the Mount Cashel victims and to permit the judicial process to function in the normal manner.

We have therefore united in a common effort to assist the victims of Mount Cashel to obtain just compensation, to permit their voices to be heard at the Commission of Inquiry established by the government of Newfoundland to review the response of the criminal justice system and to ensure that justice will finally be done to those who have had to suffer in silence for decades.



'Try to behave like a judge,' he tells chairman

Kopyto wants judicial review for bias' at society discipline hearing

by Jack Nagler

in gadfly lawyer Harry

Mr. Kopyto requested files on any other members of the law society who have billed the legal aid plan for an equal number of hours between 1984 and 1986.

He said this was to show that it was possible for him to do the work he claimed, and also to demon-

•• Th

Harry shouts his defence

By DAVID KENDALL
Toronto Sun

A feisty Toronto lawyer yesterday reduced to a shout-fest a hearing into allegations he cheated the legal aid system.

The Law Society has accused Harry Kopyto of professional misconduct during 1984-85, allegedly.

Legal Aid Plan.

Yesterday Kopyto arrived with 15 placard-toting supporters who chanted outside Osgoode Hall to the music of the passing Shriner parade.

Inside, they...

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★ THE TORONTO STAR, THURSDAY, JULY 6, 1989 /A29

Kopyto calls tribunal 'charade' as queries to Scott overruled

By Bob Mitchell Toronto Star

Toronto lawyer Harry Kopyto has accused a law society tribunal of preventing him from getting a fair trial.

Kopyto could be disbarred.

But throughout the first two days of the hearing at Osgoode Hall, Kopyto, who has defended the little guy against the establishment throughout his 15-year law career,

cal creed and his support of those who are fighting the system.

"I'm a thorn in the side of the legal system... I just don't fit in."

step on too many toes. There has been no...

THE TORONTO

News

Testimony at Angie Codina

Ont. law society has

Law society auditor 'upset' by secrecy of misconduct probe

THURS JULY 13/89



Toronto lawyer Angie Codina: Report

Kopyto files complaint

THE TORONTO STAR, FRIDAY, JULY 14, 1989

Secret probe allowed, lawyers' panel told

Kopyto cites 'guilt by association' as colleague charged by law body.

From p. 1 - July 1989

THE GLOBE AND MAIL, SATURDAY, JULY 29, 1989 A9

Legal aid officials assailed by Kopyto after cheque withhe

BY JULIA NUNES
The Globe and Mail

Toronto lawyer Harry Kopyto accused the Ontario Legal Aid Plan of trying to drive him out of his practice after his weekly cheque was withheld yesterday.

"I think they are trying to close me down. They're throwing hundreds of clients out onto the street,"

was underpaid, no question it."

Mr. Kopyto said he could not possibly pay the August rent for his office without the cheque, which was estimated at about \$2,000.

"I'll be lucky to last until August (when the committee passes its sentence)," Mr. Kopyto said. "They're driving me into bankruptcy. I survive more than a couple of



Discipline hearing on beha biased, maverick lawyer sa

BY JACK NAGLER

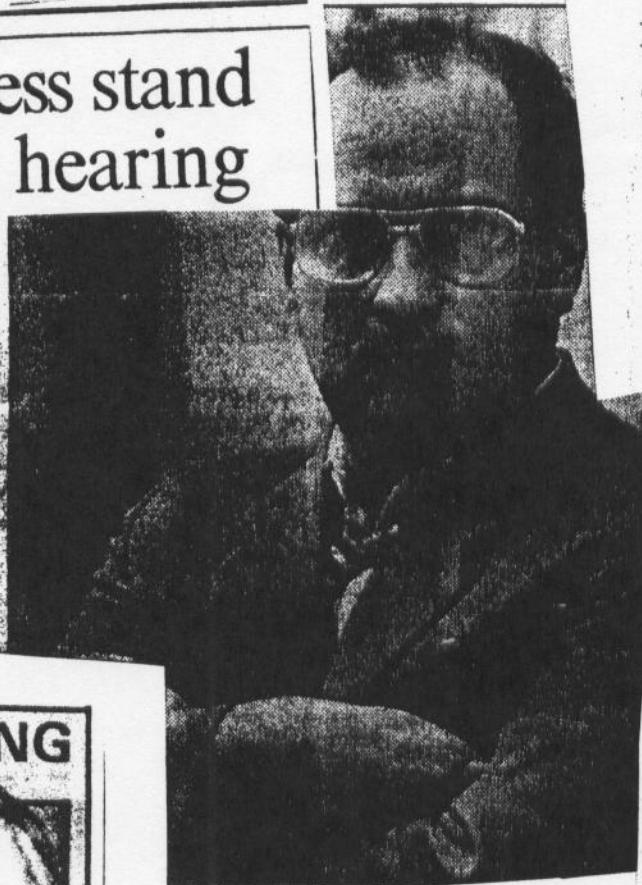
Scott on witness stand at law society hearing

Considering complaints that Mr. Kopyto overbilled the provincial Legal Aid plan between 1984 and 1986.

But Mr. Kopyto yesterday accused Ian Outerbridge, the disciplinary panel's chairman, of harassing him by stopping him from presenting his views, and said the hearing was "unfair."

"As far as I'm concerned, you and (opposing counsel Frank) Marrocco are two heads on the same body," Mr. Kopyto told Mr. Outerbridge. "I feel like I'm talking to a stone wall."

Mr. Outerbridge and the two



Notice of audit not required, law society told

The Globe and Mail

The Law Society of Upper Canada has no obligation to tell lawyer when they are being investigated, society disciplinary committee was told yesterday.

Reginald Watson, a lawyer for the law society, told the committee that there is no law that would have required an auditor to tell Ang Codina, a Toronto lawyer, that she was being investigated for immigration fraud.



0 The Toronto Sun, Thursday July 6, 1989

TRIBUNAL HEARING



HARRY KOPYTO
Law Society panel



IAN SCOTT
No conflict

THE GLOBE AND MAIL

Claiming bias a Kopyto seeks court review

BY JACK NAGLER
The Globe and Mail

Toronto lawyer Harry Kopyto decided yesterday to take on his profession's governing body, announcing that a Law Society of Upper Canada disciplinary hearing into activities is biased.

Mr. Kopyto, who faces allegations of professional misconduct arising from complaints that he overbilled the provincial Legal Aid between 1984 and 1986, filed an

application asking the court to hear

He said the hearing was a "harassment tactic" and a "creed" of "circular reasoning."

"I am taking legal steps," Mr. Kopyto said.

Toronto lawyer Harry Kopyto: "What is this, a kind of Kafkaesque play?"

→ p. 2 - July 6/89

From p. 1 - July 6/89

Law Society requested taking of lawyer's files, auditor tells committee

Y JACK NAGLER
Globe and Mail

Thurs July
13/89

The Law Society of Upper Canada used an account auditor to retrieve files on some of lawyer Angeline's clients during its investigation of her activities, a society disciplinary hearing was told yesterday.



D38 THE T

Harry Kopyto fears for 'poor' clients as legal aid plan stops his payments

By Joseph Mall Toronto Star

Toronto lawyer Harry Kopyto says about 200 clients, many "poor and disadvantaged," will soon be without representation unless the provincial legal aid plan starts

enough to survive this week, but if they don't pay me next week I won't be able to do it and within two weeks there will be 200 people out on the street without any legal help whatsoever."

Our mistake

A story and headline yesterday incorrectly said Toronto lawyer Harry Kopyto overbilled Legal Aid by \$650,000. His total billings were \$650,000. Mr. Kopyto admitted to billing the Ontario Legal Aid plan inaccurately between 1984 and 1986.

any more cheques until an agreement is reached on how much he owes.

"He pleaded guilty to excessing and we have to find out exactly where we stand before we can

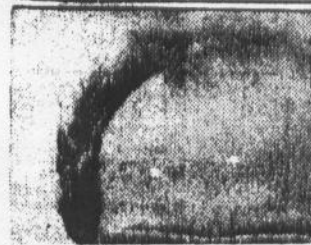


HARRY KOPYTO
Admits overbilling

Legal Aid pay for Kopyto withheld

By DARYL-LYNN
CARLSON
Toronto Sun

Legal Aid has withheld a \$2,000 cheque from lawyer Harry Kopyto as it begins to recoup money he overbilled.



Kopyto calls tribunal 'charade' as queries to Scott overruled

By Bob Mitchell Toronto Star

Toronto lawyer Harry Kopyto has accused a law society tribunal of preventing him from getting a fair trial.

"This is a charade . . . a game," Kopyto told the three-member panel yesterday after the tribunal prevented him from questioning Attorney-General Ian Scott on the manner in which the Law Society of Upper Canada conducts its business.

"You continually rule all of my questions irrelevant. I can't get a fair hearing when you people make all the rules.

"You've won the first round."

The tribunal is hearing a complaint that Kopyto allegedly submitted inflated accounts for payment to the Ontario Legal Aid Plan, including billing the plan for 8,235 hours — an average of 7.5 hours per day — for every day from 1984 to 1986. If found guilty,

Kopyto could be disbarred.

But throughout the first two days of the hearing at Osgoode Hall, Kopyto, who has defended the little guy against the establishment throughout his 15-year law career, has refused to deal with the charges.

Instead, Kopyto has tried to prove that the law society, with the blessing of the office of the attorney-general, has been systematically trying to "drive him out of the profession."

As in the past, several of his clients attended the hearing, providing moral support for Kopyto.

Kopyto argued that the current charges are only "one part of a pattern" of harassment that he says the law society has been conducting against him for many years. He said he is being harassed because of his outspoken criticism of the Ontario legal system, his politi-

cal creed and his support of those who are fighting the system.

"I'm a thorn in the side of the legal system . . . I just don't fit in . . . I step on too many toes," Kopyto said. There has been no plot to get him, he said. The system is more subtle — "it grinds down individuals who don't toe the line."

At one point yesterday, Kopyto tried to quash the proceedings, claiming the tribunal was "biased" because it was being both judge and prosecutor in his hearing. But instead of sending the issue to a higher court for a decision, the tribunal decided to continue with the case.

Kopyto claimed that for many years, the society has been harassing him and his clients and "intimidating" his associates, especially fellow lawyer Angie Codina, who is also being investigated by the society for allegedly counselling immigration fraud in 1987.

"There isn't a single lawyer in Ontario who has been subjected to the expense, the massive investigation and ongoing harassment that I have, all designed to break my spirit," Kopyto said.

In attempting to question the attorney-general, Kopyto referred to a letter sent by law society counsel Reg Watson to Codina in 1987, in which Codina was offered the chance to be suspended from the society if she persuaded Kopyto to resign.

But every time Kopyto tried to question Scott on the matter, the tribunal ruled the questions irrelevant.

The hearing is now adjourned until July 24.

Harry Kopyto Defence Committee

372 Bay Street, Suite 1708
Toronto, Ontario M5H 2W9 (416) 361-1404

August, 1989

Dear Friends,

Harry Kopyto recently admitted to inaccuracies in details in his accounts rendered over a three year period ending in 1986 to the Ontario Legal Aid Plan.

Harry estimated the number of his phone calls and other preparation work--sometimes to his benefit, other times to his detriment. Overall, the two sides cancelled each other out.

What Harry did is "guesstimate" his preparation time. This is not uncommon among lawyers; what is uncommon is that he was charged by the Law Society and now faces a penalty hearing scheduled for Friday August the 11th, 1989 at 10:00 a.m. and continuing on Saturday August 12th, 1989 at the Law Society premises located at Osgoode Hall (northeast corner of Queen and University Avenue).

Despite inaccurate media coverage, which included an allegation, later corrected by the Globe and Mail, CFTO and other news media that Harry had overbilled the Plan by \$650,000.00, Harry's friends, clients and associates know the real reason for his harassment and prosecution. He stands virtually alone against an establishment which is determined to drive him out of the legal profession. Harry Kopyto's treatment by the Law Society contrasts sharply with the way establishment lawyers are handled. The decision of the Discipline Committee Chairman, Paul Lamek, last month to quash recommended charges against two senior Lang, Michener lawyers, Robert Wright and Burke Doran, because of their voluntary confessions shows the real bias against radical lawyers and in favour of conservative ones.

Between 1984 and 1986 (and still now), Harry took on hundreds of cases which other lawyers would not touch. He used these cases to attempt to reshape the law to benefit workers, women, trade unionists, tenants, prisoners, minority group members, the disabled and others who seldom receive fair treatment within the judicial system. Harry failed to keep

absolutely complete records of each call and meeting because he wanted to devote his efforts to benefit as many clients as he could. It was his clients and not he who benefitted as a result. Furthermore, the Legal Aid Plan paid only two thirds of the amounts that he billed, thereby denying payment for any work inaccurately reported.

The real purpose for the Law Society's move against Harry is revealed in its decision to freeze all payments for his current legal aid work. Though Harry is continuing to perform services for which he may not be paid, the Law Society's real target in this latest move are his clients. If Harry is put out of business, the legal system will be safe once again for landlords, corporations, governments, police forces and all those who now benefit from the institutional bias within the judicial system in favour of the status quo.

We are all now challenged to rally behind Harry as he appears on August 11th, 1989 to explain how and why the inaccurate accounts were rendered, the nature of his practice, his philosophy of Legal Aid and the real issues at stake. He will be facing a discipline panel chaired by notorious Law Society hitman, Ian Outerbridge, and two equally biased sychophant benchers. The final determination of Harry's fate will affect all of us who want to see the judicial system more responsive to the needs of common people.

See you at 10:00 A.M. on Friday August 11th, 1989 and Saturday August 12th, 1989 at Osgoode Hall. The time is short. The need is urgent. The stakes are high.

Mary-Joyce Stone

Mary-Joyce Stone
Chairperson,
Harry Kopyto Defence Committee

DATE: Friday August 11th, 1989 and
Saturday August 12th, 1989

TIME: 10:00 a.m.

PLACE OF
ATTENDANCE: Law Society
Osgoode Hall
130 Queen Street West (just east of
University Avenue)

Kopyto too special to lose, panel told

Called a 'crusader,' lawyer faces penalty for overbilling legal aid

By Michael Tenszen Toronto Star

Feisty lawyer Harry Kopyto, facing punishment for an estimated \$150,000 in overbilling, is a "special person," his lawyer says.

Kopyto's loss to the legal profession would rob society of a crusader who embraces "last-resort cases" that others shun, Charles Roach said yesterday.

Roach told a disciplinary hearing: "He is a workaholic. He falls to bed with his dictating machine in his hand. You are not dealing with your other lawyers."

Kopyto, a 42-year-old Bay St. lawyer, has admitted to the Law Society of Upper Canada that from 1984 to 1986 he charged too much for work he did for clients using the Ontario Legal Aid Plan.

His total legal aid billings for 423 clients during the period was \$611,000.

He admits that about 2,000 of the 8,209 hours of work he submitted "should not have been billed."

And he says the overcharging was the result of poor bookkeeping, "guessing and estimating" by a harried, overworked but dedicated lawyer.

After 12 days of hearings, the society's disciplinary panel heard concluding arguments yesterday. It is expected to decide his fate within three weeks and he faces punishment ranging from disbarment to a reprimand.

During yesterday's hearing, panel chairman Ian Outerbridge expressed amazement that Kopyto

could work about 10 hours a day for three years on legal aid work alone.

"He has no time to eat or sleep," Outerbridge said.

Roach said Kopyto has no hobbies and few interests other than the law and fighting for the poor and dispossessed.

Kopyto, he said, probably takes on too much and works too hard because he simply "does not refuse to take any clients."

"So many lawyers just won't work for legal aid," said Roach, who noted that Kopyto probably accepts more legal aid work than any other Toronto lawyer.

"A lot of people who don't know where to turn come to him. Some of these people are not easy to deal

with. These are last resort cases."

Roach said Kopyto strayed from the "straight and narrow road" but did so because of overwork which caused him to "average and guess" at his hours spent on legal aid cases.

Because of his value as a lawyer, Kopyto must not be disbarred, Roach argued.

If anything, he should be reprimanded and given a bookkeeping course on how to monitor his legal aid billings.

Kopyto offered the panel a lecture on his philosophy as a law activist.

"I go beyond the impossible for my clients," he said. "We try to do the impossible. I do what I can with what little I have."

When all other lawyers fail or give up, he will take up the challenge, he said. He has not "special techniques" in the courtroom, "I just go in and fight."

Kopyto said he will use the courtroom, the political system, the media or the many pressure groups he is involved with to fight bad laws, police misconduct and violations of human rights.

"Even though I lose in court, I get the legislation changed two years later."

"I consider the fight for justice more important than what happens in court."

Kopyto said in an interview that if he is disbarred he will seek the national leadership of the New Democratic Party or act as a legal agent and take on unpopular cases.

IN SEARCH OF JUSTICE - HARRY KOPYTO

This is a transcript of a lecture by Harry Kopyto, a former York University student, now a criminal lawyer, to approximately 250 students at York University, City of York, Toronto, Ontario, which took place on September 2, 1989.

Submitted by
Jack G. Miller, Ottawa

Harry Kopyto:

I am glad to be back home. This is where the corruption started. "I came to bury Caesar, not to praise him." I have been a criminal lawyer for the last 16 years and let me share with you some of the experiences I have had. But maybe before I do that, I should tell you a little bit about myself.

One time I used to be a nice guy. It was a long, long time ago in a place far, far away, maybe in a different universe. What happened was that once upon a time there was this kid born by the name of Harry Kopyto and he was born in very unusual circumstances, in a D.P. camp in Germany. By the way, D.P. stands for "displaced person." It sounds very technical *displaced person* but it means that you are born without any grandparents; it means you don't have any cousins; you don't have any uncles or aunts. It means that the only people who have survived Nazi Germany are your father, your mother and your brother. And something like that can give you a very strong social conscience, a strong sense of justice at a very early age. From the moment that I developed any idea of what society is all about, I dedicated my life to fighting for justice, a world without racism, a world without antisemitism, a world without war, a world where people are equal in fact as well as in law.

And this little kid named Harry Kopyto, raised at Spadina and College in Toronto, went through public school, went through high school, went through university, and one day decided that he would go to law school. And the reason that he wanted to go to law school was because of his thirst for justice, because of the requirement, the need that he had, to atone for the death of others (whom he didn't even know) - maybe out of a sense of guilt, whatever.

But this kid named Harry Kopyto wanted to fight for the rights of people; he wanted to fight against racism; he wanted to fight against sexism; he wanted to fight against ageism. He really believed that the single most important thing that he could do with his life was to dedicate it completely, and totally and utterly, at whatever cost it might be for him personally, and with whatever limited

abilities he had, to the fight for justice.

And that's the attitude that he had when he hit first year law school. And there were other kids: he wasn't unique, he *isn't* unique; in fact, there are lots of other kids who thought the same way. At first year Osgoode law school there were lots of persons who wanted to go into criminal law, who wanted to defend people who were wrongly charged. Do you know what it means for a person to be found guilty of a crime which he did not commit? For me the horror of that ever happening, it was a *Kafkaesque* nightmare, that this could ever happen. I wanted to find that person who was so wrongly charged; I wanted to defend him; to stop this travesty of justice. I wanted to change the laws so that rich and poor would be treated the same, so that black and white, Jew and Christian, men and women, everybody, would be treated the same.

I wanted to find that person who was wrongly charged...I wanted to stop this travesty of justice"

I didn't like the idea that most of the persons I fought for in the courts ended up being poor. I didn't like what I perceived to be a tendency in the law to treat people differentially on the basis of their connections; and there were others like me.

And you know I went through second year law school, and third year law school, and then I took the bar admission course, and then I got out to practice. And a lot of young kids who, in law school had felt like me, all of a sudden - I noticed that some of them, for example, changed their names; people whose names were something like Kopyto all of a sudden became Cooper; kids that I used to play softball with all of a sudden started wearing three-piece suits, and going to different kinds of places for long drinks, and things like that. And all of a sudden when I saw them at the Old City Hall and at the criminal courts - well, I *didn't* see them there. They ended up some place on Bay street, some place in a nice shiny building with lots of glass windows and high ceilings, oak desks, doing work for corporations: tax law, corporate law.

But Harry Kopyto decided that he would go into the halls of the Provincial Court, criminal division of the District Court, and the Supreme Court and fight for truth and justice and give whatever he could to the struggle to make people be treated equally.

Now one day - I remember my first criminal client; I

was sitting in my office. I had just put my up little shingle; and there I was, ready to shine light into darkness; I was ready finally to begin my life-long struggle. In walks this kid. He is about 18 years old; he is grubby; he looks at me and he's got a bump on his cheek, the right cheek. And he says to me, "Harry?" I said, "Yeah." He said, "I just got beat-up by the cops." I said "Your kidding! They wouldn't do that, those things don't happen." I was a little naive, you might say. And he says, "Yeah, I really got beatup by the cops." For sure he was a liar. I cross-examined the "you-know-what" out of him and still he stuck to his story. And finally, after a tremendous amount of time, soul-searching, and trying to determine whether or not he was giving me a line, I decided that the guy was going to tell his story in the court room the following day when he showed up for trial. The funny thing was, he was charged with assault by the police, and he's the one who says he was assaulted by the police. No problem. And by the way, I asked him just the night before when we were preparing for trial, "you don't have a criminal record, do you?" "Oh yeah, I do." "Oh, is that right? But nothing involving assault?" "Uh, well, as a matter of fact, Harry, there was one or two little assaults." Turned out he had a lengthy criminal record. "Well, no problem. You are going to go on the stand, you're going to tell the truth." So I put him on the stand the next day, and there was this judge there, wearing the robe. Any person wearing a robe, you know he's going to be some kind of fatherly God-like figure, who is going to do right by you. So I put my client up on the stand. I told him how to give his evidence. Be sure and speak to the point; don't volunteer answers; don't be argumentative. And then he goes up there. He tells the story about how he was arrested and about how the police pushed him around on the street. He was a little bit drunk and the cops had stopped him, put him against the car. And then they started working him over while he had his hands on the car, and they started kicking him and hitting him. And then they charged him with assault. And he told this story to the judge. Oh, I could hear the violins. There was no way I was going to lose this one. This guy was going to be discharged for sure. Well, he spoke really, really nicely. Then the policeman came on. There he was in his uniform. He even had his gun on him; he didn't have time to change from his uniform. And what

happened then was that the policeman also gave his answers. He sort of shouted them out. They were terse. It was like he knew exactly what to answer. On the cross-examination, he was right to the point. He'd been prepared a little while too, maybe by 15 years of experience.

Anyway at the end of this, I made a passionate plea to the judge to find my client innocent, to give him the benefit of a reasonable doubt. After hearing my impassioned argument, my pleas, the testimony, my case law, there was a moment of silence. Then the judge says to my client, "please stand Mr. John Smith," and Mr. John Smith stands up. There I was standing right beside him, both fingers crossed. And he says, "Mr. Smith, on the evidence that I have heard, I find you guilty as charged." It was a blow from which I scarcely recovered. I didn't quite cry in the courtroom, but...

Next week somebody else came into my office. And guess what? He also had a story. He was beaten up by the police. I said, "OK, we are going to put you on the stand and we are going to plead you not guilty. We'll do it again." And I went back. There was another judge, but after awhile they all started, you know, looking alike. And I put my client on the stand and he told his story, and the policeman told his story. And what do you think happened? Yeah, I lost again.

"I fight...for those who don't have power, who don't have influence against those who have both."

But I'm a pretty tough guy and I don't fight too often. But if I have to... I believe in justice, and I went back a third time and a fourth time. You know, all these kids who get beaten up, they seem to have criminal records. It seems that people who have no credibility in society are targeted by the police. If you have got a criminal record, nobody is going to believe your version anyway. So there is a sense out there that the cops can do anything to you. Anyway I went back for a third time, and I went back there a fourth time, and a fifth time and a sixth time, and a seventh time, and time after time, they kept coming back and finding my clients guilty.

But then... there was a tenth time. A client came to me and said, "Harry, the police are talking to me; they came to my house; they are threatening me. They want me to make up a story admitting to what I have been charged with. They are twisting my arm, they are saying that if I don't cooperate with them they will make up a story and

IN SEARCH OF JUSTICE - HARRY KOPYTO

send me to jail for three to five years." I said, "You're kidding!" - but I no longer said that *the police don't do that*. But I said, "Hmm, very interesting". And then I grabbed my briefcase, and what do you think I found in my briefcase? I found something that looks like this (a recording machine). Except it was a little smaller. And I said, "Let's see, do we have a tape? And would you like to phone the police - and here's a device to hook up to your phone."

Over the next five months, my client was visited by the police at his home on five different occasions. There was a dozen phone calls. We tape recorded every single one of those phone calls. What they said to him:- "We'll go for your throat if you don't cooperate with us." They agreed to cover up for him when he couldn't appear in court. They threatened him physically with harm if he wouldn't tell his (their) story. They even said they knew which judge to talk to, which crown to talk to. And there it was, on tape! And then I ended up getting it all typed up, three hundred pages of transcripts. And then I went back to the court. And I put my client on the stand. I said, "Your honour, my client has a story to tell." Well, actually, we had a *"voir dire"*. We had a trial within a trial to determine whether the statement could be admitted.

And the police officer, one of the two police officers -- Sills and Campbell -- one of them, Sills, got up on the stand in the District Court, and I said to him, "Did you tell my client that if he doesn't cooperate, he will get three to five in the pen?" No, sir, I would never say such a thing." "Did you say to my client that if he doesn't say so and so, I'll go for your throat?" "Oh no, sir. I would never do such a thing." "Did you say that you could get the charges dropped against my client if he turned in a heroin addict from Parkdale?" "Oh no, sir, I would never do such a thing." Question after question after question: "No, no, no, NO." And then, while the police officer was on the stand, I reached underneath the counsel table. I pulled out and put on the table a netto-blaster. You could see the blood draining down his person's face, and, of course, all the charges were withdrawn. My client was found 'not guilty' and that police officer was found guilty of perjury and of obstructing justice.

And why have I told you his story? Because I wanted you to know a little bit about myself. I'm a fighter for justice. Now, there may not be too many people like me, but you can have an

influence on the criminal justice system; you can beat the cops on their own terrain. I fight for people who don't have money. I fight for people who have minority status in society. I fight for the young against the old. I fight for tenants against landlords, for the widows against the mortgage companies; for the poor against the rich; for prisoners against jailers; for the physically and emotionally disabled against institutions in which they are virtually incarcerated; for women against men who beat them up; for children against persons and institutions that abuse them; for those who don't have power, who don't have influence, against those who have both.

Let me tell you something about the justice system. The justice system on the outside looks very, very hard. The criminal law says "thou shalt not do this" - and of course anybody who does is going to get up to five years' imprisonment or up to 10 years' imprisonment. On the outside it is very, very, hard. But do you know what happens when you fight the justice system. Inside, it becomes very, very soft. If you put up a fight, if you fight for justice, it can have a result.

The Law pretends to be equal

Now I want to talk to you a little bit more about the kinds of things I have done within criminal law, about the experiences I have had. But first of all, let me just tell you what I consider to be the fundamentally most important thing that I want to leave with you today, and that is that the law has two aspects to it. On the one hand, it pretends to be equal; it holds itself out to be fair; it holds itself out to treat everyone equally. Everyone is forbidden to sleep underneath bridges, both the rich and the poor. Everybody shall not murder, everybody shall not steal. There's the whole ideology of the law which is based on *lex talionis*, equality. An eye for an eye, a tooth for a tooth. Every single criminal justice system that's ever existed, whether in Africa, in Asia, 10,000 years ago, or now, reflects the principle of equality, restoration of equality. You put the person back in the same position he was in before he was aggrieved. And the payment extracted from a person who violates a public law, a law that offends society, a criminal law, is to extract from him a payment in time, or in some form that is equal to the magnitude of the crime that he has committed. There is this historical, rooted, collective, unconscious sense

that the criminal law is there to restore, that it is there to make absolute equality, and that it treats everybody equally, and that everybody is treated the same way. The lawyers, both the defence lawyer and the crown lawyer, both work closely together. The judge is in the middle. Everyone knows the judge is neutral. Everybody knows that the judge doesn't have any predispositions. Everyone knows the judges have come down from the sky right now and will listen to you completely fairly. Everybody knows that there are clear procedural rules of conduct that apply to the Crown and to the defence. The whole system is based on a concept of equality, the scales of justice, and justice is blind. There are no predispositions. And that's the myth of the law: of the criminal law especially, (we'll talk about civil law some other time, maybe.)

But there is another reality. Because this myth of the law, myth of equality, myth of treating everybody the same is constantly being buffeted around by a new reality, the social reality that people are not equal, that it is only the poor people who need to sleep under bridges and not the rich, that nine tenths of the law has to do with the preservation of private property, which means maintaining the system as it is right now, which means that nine tenths of the criminal law is designed to protect those who have from those who have not. There is the reality of the law that just because two lawyers each wear robes, that doesn't mean that the one who is retained by somebody who has \$10,000 and fifteen police officers behind him, isn't in fact much more able to present his case than somebody being represented by a legal aid lawyer who has five other cases on his mind, who has five hours to prepare the case, and who might get \$500 for his work.

"nine-tenths of the law has to do with the preservation of private property... designed to protect those who HAVE from those who HAVE NOT."

There is the reality that the judge who is supposed to be neutral in the middle and not taking sides himself, has heard the police officer testify before him fifteen or twenty or thirty times before, and there is a sociological phenomenon which is explained better by others than me, which makes him have a predisposition to accept, as valid, evidence which is given in a certain way by people who have notes. There is the reality that this judicial system that we have, the criminal justice system, which is allegedly based on a

The system...is really a very chummy little club

Crown fighting a defence lawyer in an adversarial system in which the best will win, in fact *doesn't exist*. Does not exist! Do you know what is the busiest room in the Old City Hall? It is not the courts. It is not even the hallways. You go down to the Old City Hall where hundreds and hundreds of people are processed through the criminal justice system every day and the busiest place, there is a room there - actually, there are lots of rooms with lots of doors - and there is one, and on it it says room number 114. It is not a court room; it is not a library; it is not a place where defence lawyers hang out for coffee; it is not a place where criminals hang out. Room 114 is the Crown's office. You go in there at 9 o'clock in the morning. The rest of the place is deserted, but you open that door at Room 114 and -- VOOCOM! There are fifty defense lawyers lined up to make deals with the Crowns. That is the busiest room. That's the kitchen sink behind the appearance of justice. This adversarial system in which lawyers are supposed to move mountain and earth for their clients and give everything they have is a facade masking the reality of a chummy little club where people make little deals and work everything out. That's what happens, because lawyers are busy, you see; they get their guilty pleas in by 10:30 a.m., then they can go home or go to their office and make some more money. That's the reality. The reality is that the system, allegedly adversarial, is really a very chummy little club in which things are "worked out."

Now, of course, the defense lawyers are lined up. There are not enough chairs for them, it is so crowded. The Crowns are all sitting in their own cubicles and they are just processing. You go in there; you say, "My client is 27 years old..." and this and that, and "He's got only three previous...", and you distinguish the previous convictions and the Crown says, "Well okay, I'll ask for six to nine months or nine to twelve months," and you say "No, three to six," and you try to work something out. And then you go into court and you rubber stamp it and you leave. That's the way: the reality behind this adversarial facade. The judicial system in this country is basically dominated by political hacks, old, white, conservative, male, waspish, sclerotic individuals. Its basic purpose, the criminal justice system, is to protect those who have from those who *have not*. to be continued...

THOUGHTS AND RESPONSES

New and badly needed...

CANADIAN INSTITUTE FOR
POLITICAL INTEGRITY

Fellow Canadians,

The Canadian Institute For Political Integrity is the "brainchild" of a number of "retired" National Capital businessmen, including "HILL" corruption protester, Glen E.P. Kealey. The ultimate goal of the Institute is to publicly insist on, and lobby for, the creation of an "Office of the Independent Prosecutor", in Canada.

Today in Canada politicians have become the modern day ALCHEMISTS. Simply by changing certain laws or regulations such as the zoning bylaws, or by fraudulently contracting for professional services, or again through other schemes such as the "targeted tax exemptions for the rich", the politician

course. This tollgating is usually discreetly collected and moved off-shore with the help of privately contracted personal services provided by many money-laundering lobbyists. *Tollgating alone created the national debt.*

Inevitably, the Press, motivated more by the "bottom line" than by its perceived role of informing the public, reports, as gospel, the decisions of the pliant Justice System, thereby providing the real protection expected from them by politicians, while simultaneously, many career-minded police officers investigate political chicanery only with a view to discrediting the whistle-blower informants.

In our view, the short-term goals and mission of the newly-created *Canadian Institute for Political Integrity* should be the following:

- 1) to gather the evidence,
- 2) to investigate political crime by utilizing the services of "retired" investigators with publicly proven integrity,
- 3) to publish the facts and
- 4) to lay private charges or otherwise to file the appropriate class-action lawsuits against the obvious

groups - crooked Canadian politicians, their co-conspirators in the press or in other media, and finally - the careerist police officers who are brought to our attention by the public for their wrongful belief that their job is one of "Protecting Power" rather than doing what we the people pay them for: that is, for "Protecting Canadians from the Powerful" (also included in this category we would investigate all others in the Justice System including officials and mandarins such as Deputy Ministers, Attorneys General, Justices of the Peace, Crown Prosecutors and Judges).

Be part of the solution. Your views and input, whether financial or otherwise constructive, would be appreciated at this time.

Glen E.P. Kealey, Chairperson
John Goodfellow, Chairperson

Canadian Institute for
Political Integrity
P.O. Box 1634, Station B
Hull, Quebec J8X 3X5
Telephone (819) 778-4705
Fax (813) 747-1644

Why worry?

"It is a gloomy moment in the history of our country. Not in the lifetime of men has there been so much grave and deep apprehension never has the future seemed so incalculable as at this time. The domestic economic situation is in chaos. The dollar is weak throughout the world. Prices are high as to be utterly insupportable. The political situation seethes and bubbles with uncertainty. It is a solemn moment of our troubles. No man can see the end." This quote from *Harper's Weekly*, October 1857 (Printed Norman Vincent Peale's *How to be your best.*)

Jackie G. Marcil
Franklin Centre,

ANOTHER COMMENT ABOUT
A FLAG FOR ANGLOS

I would just like to say this about Mr. K. Tell me your suggestion for an Anglo-Quebec Emblem: As an Anglophone Quebecer, the Canadian Maple-Leaf is a good enough symbol for us in all situations

Brian El
Lasalle,

CONTINUED FROM PAGE 35

HARRY KOPYTO, CONTINUED

was that I went to court and do you know what? I didn't go to court by myself. I showed up to set a date with nineteen lawyers wearing their gowns. All of them wanted to be my lawyer and none of them wanted a cent. And eventually those nineteen ended up being thirty-three lawyers and eventually I fought against the law of scandalizing the court. And eventually I was found guilty. I had the editor of the *Globe and Mail*, the editor of the *Lawyers' Magazine*, the *Canadian Lawyers' Weekly*, I had a Rabbi, even, come and say, "Harry really tries to do the right thing." But what do you think happened? Despite my charming nature, and keen sense of humour, Justice Montgomery found me guilty of scandalizing the court and then he ordered me to apologize. Apologize, or else I couldn't appear in court again, anytime, ever. I couldn't work in a court. And couldn't work in a court. And that sounded very, very Stalinist to me. You know that in Russia they stop people who don't have the right ideas, -- you know, who won't succumb to the system -- from working (or they used to do it). Anyway, I took that case to the Court of Appeal and I had to make a decision. Let me give you an example of how much chutzpah I have. I decided -- everybody said, "Harry, appeal the

sentence. It's a ridiculous sentence. Nobody is going to order you to apologize; that violates your conscience." Anyway, I said, "No, I don't want to appeal the sentence. I'm just going to appeal the conviction. And I'm going to appeal the conviction only on constitutional grounds. The courts are going to have to choose between the law and me." I didn't know what they would do, mind you, but I wanted to use the public support that I had, the seven editorials in the Toronto papers including *The Sun*, the massive support that had come in from Doukhobors in British Columbia, from unemployed people in Montreal, from the Southern United States. This case had a big impact. I wanted to use that public support to do away with a law that belongs in the feudal ages. We don't need that law. We were trying to do away with "scandalizing the court." That law is now unconstitutional and it no longer exists. In that case, I was the party, the accused, not the lawyer. And what I did there was argue the case only on constitutional grounds.

So the law does respond, but it responds only for people who are dedicated, only for people who are committed, only for people who have a thirst for justice.

I hope that many of you decide to go to law school. I

hope that many of you who, I know, have your own experiences in life, leave enough time. Get your own experiences. But in some way I have a feeling that on some level you have reached me and I have reached you in this discussion. We have some common ground, I sense it. You know I always feel so totally at home among young people. The older I get the younger I get. The more I fight, the more I am committed to my fight and I hope that whatever happens to me, because of the Law Society's harassing me right now, whatever happens to me, I hope some of you go on to law school. I hope some of you will carry on the struggle for real social justice.

Thank you very much.

Harry Kopyto

Postscript:

Harry Kopyto's heroic battles against injustice and human rights violations earned him enemies among powerful institutions. It cost him his license to practice when, in a split decision, the Law Society of Upper Canada expanded his admission of poor bookkeeping into that harsh penalty, in defiance of the conventional practices of other professions such as medicine.

Jack Miller, Ottawa

IF YOU WANT TO WRITE TO
PROVINCIAL OR FEDERAL
REPRESENTATIVE, HERE ARE
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B.C. Legislative Building
Victoria, BC V8V 1X4

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Edmonton, AB T5K 2B6

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Building, Regina, SK S4S 0N2

Manitoba Legislative
Winnipeg, MB R3C 0B3

Government of the Yukon
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Whitehorse, YT Y1A 2C6

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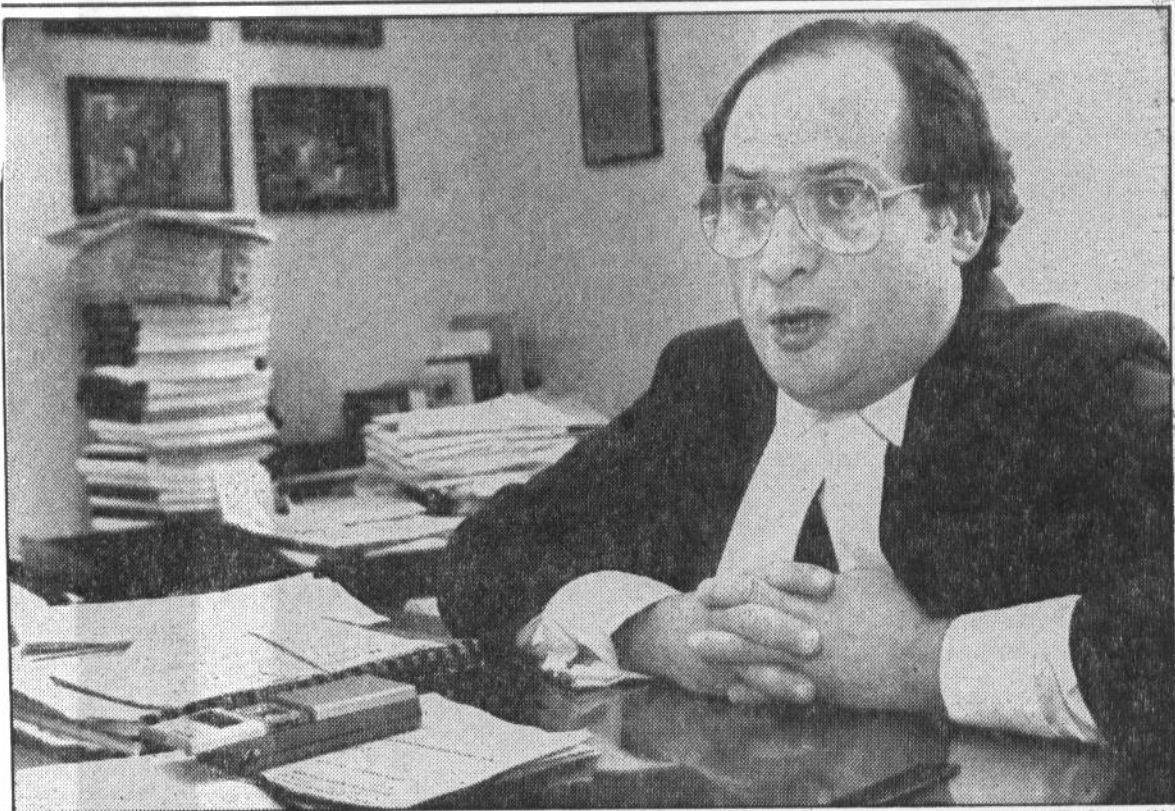
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Confederation Building
P.O. Box 8700, St. John's
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Hotel du Parlement
Quebec City
Quebec G1A 1A4

For Federal MP's and
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FRED LUM/The Globe and Mail

Harry Kopyto views trouble with law society as long-standing vendetta going back to his student days.

Outspoken Kopyto rallies allies in battle to prevent disbarment

BY DONN DOWNEY
The Globe and Mail

Harry Kopyto, lawyer for the poor, the unwashed and the dispossessed, sits in his less than opulent office in one of Bay Street's more modest office towers, rallying his allies.

On Tuesday, the disciplinary panel of the Law Society of Upper Canada recommended his disbarment for inaccurately billing the Ontario Legal Aid Plan. Law society benchers will vote on the recommendation on Sept. 28.

It is by no means the first time that Mr. Kopyto has had trouble with the law society and he views it as a long-standing vendetta that may go back to his days at the University of Toronto, where he was a student radical.

"There's one treatment for members of the old boys' network, for members of the wealthy elite, and there's another treatment for

Harry Kopyto," he says.

"The law society spent more money on me than any other person in their entire history. . . . My lawyer suggested that the costs were somewhere between \$100,000 and \$150,000 for the outside accounting firm alone. They investigated everything I did over a period of three years."

Even today, he describes himself as a Marxist-Trotskyist whose central purpose is "the liberation of working people and their allies."

But for the law society and Mr. Kopyto, that is not the issue now.

Mr. Kopyto says he is in trouble because he opposes their system. "I stand in favor of the kind of justice that they themselves don't believe in," he says. "I stand for justice with a small 'j'; they stand for black letter justice."

"I fight my cases on substance, not on the procedure. I don't participate in the obfuscation and confusion that often characterizes le-

gal argument. I tell it like it is and I involve the public."

That may be part of his problem.

He is just as eager to talk about his newspaper clippings as he is about his court victories. "There have been at least 1,000 newspaper reports since 1974 in the Toronto papers alone about my cases," he says. "I've had at least 25 cases break on the front pages."

Mr. Kopyto was devoting much of his time yesterday to marshalling his constituency. He wants them to show up at Queen's Park on Sunday afternoon for a demonstration that will march to Osgoode Hall.

He talks about the phone calls of support, the people who talk to him in elevators and about support from Doukhobors in British Columbia, from an unemployed New Brunswick worker who sent him a dollar and unspecified contributors in the United States and Europe.

"The whole purpose of my life is just to expand the legal rights of

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tenants, of prisoners, of women, of trade unionists, of working people, of minority group members," he says. "That's the whole reason why I practice law."

He says he is confident that the law society will not disbar him, but even if it does, he is not concerned about his future. He is separated from his wife and has two children, but the woman in his life is Angie Codina, another lawyer who has a successful practice as an immigration consultant in Hong Kong.

"We're in love with each other," he says.

She pays the rent on his office and the mortgage on his home on Dunvegan Road, as well as for his food and his heating. "It's been that way for several years now," he says.

Mr. Kopyto says that for the past two months he has not earned anything because the Ontario Legal Aid Plan "has frozen all my clients." He says he has been in a financial crisis for 15 years, almost his entire legal career. The most he ever made, he says, is about \$50,000 a year in the early years of his practice.

Asked about his track record, Mr. Kopyto says: "I've won all my cases."

He argues that he practices law to bring public attention to an issue. This may ignore the concerns of his clients, he says, but "I have a better track record than most lawyers. I've won many cases that other lawyers wouldn't even take on."

He talks about being "on the cutting edge of the law," acting in precedent-setting trials such as the

first gay rights case and the early women's rights cases.

He also says he exposed the improper use of medical files by the RCMP.

The cases now before him include clients suing prison officers, 25 suits against governments and 25 cases involving civil rights.

He, himself, is the target of many lawsuits. "I spend a third of my time defending myself," he says.

With uncharacteristic understatement, Mr. Kopyto says: "I suppose I might have a chip on my shoulder."

He speaks of being born "with ashes in my mouth" in Europe in 1946. Most of his relatives were "killed by the Nazis," he says. "From the age of 7 or 8 onwards, I was bound to atone for the deaths of the dozens of cousins and aunts and uncles that were murdered by the Nazis."

His parents arrived in Toronto in 1952 and Mr. Kopyto attended the University of Toronto, where he took part in demonstrations for student power, banning the bomb, the women's movement and the freedom of choice movement.

Before this most recent bout with the law society, Mr. Kopyto's notoriety stemmed mostly from a remark he made in 1985 to a Globe and Mail reporter. He was convicted of scandalizing the court by saying that "the courts and the RCMP are sticking so close together you'd think they were put together with Crazy Glue."

The Ontario Court of Appeal overturned the conviction, saying the Charter of Rights and Freedoms overrides a law that makes it criminal for someone to insult the court.



MIKE SLAUGHTER/TORONTO STAR

GATHERING SUPPORT: Lawyer Harry Kopyto fights to save his career as supporters rally round him with signs and shouts of encouragement at Queen's Park yesterday.

60 backers pledge 'love and support' for maverick lawyer

By Frances Kelly Toronto Star

It was a love-in of sorts.

Harry Kopyto loving Harry Kopyto. The downtrodden loving Kopyto. The blind, the dis-

legal profession of a "persistently dishonest person" who has no respect for the process of the law society.

But to his supporters, losing Kopyto would be a great tragedy. "I would sell my shirt. I would the last drop of my

60 backers pledge 'love and support' for maverick lawyer

By Frances Kelly Toronto Star

It was a love-in of sorts.

Harry Kopyto loving Harry Kopyto. The downtrodden loving Harry Kopyto. The blind, the disabled, the abused, the dispossessed and the poor loving Harry Kopyto.

About 60 people in all showed up on the steps of Queen's Park yesterday to pledge their support for the 42-year-old maverick, Marxist lawyer who has been a thorn in the side of Ontario's legal establishment since he first donned his robes 15 years ago.

On Sept. 28, benchers of the Law Society of Upper Canada may decide to rip those robes off once and for all if they accept a discipline panel recommendation that Kopyto be disbarred for fraudulently overbilling the province's Legal Aid Plan by as much as \$150,000.

Kopyto's supporters don't want to see that happen.

Neither does Kopyto.

"We're on the edge, but we haven't gone over it yet," Kopyto shouted to applause and cheers of "God love ya, Harry," and "Victory to Harry Kopyto" from the crowd.

"It ain't over until the fat lady sings," he shouted.

Kopyto called on his supporters to form a human ring around Osgoode Hall on Sept. 28 when the 44 benchers must vote on the discipline panel's recommendation to have him disbarred.

To the discipline panel, kicking out Kopyto would be ridding the

legal profession of a "persistently dishonest person" who has no respect for the process of the law society.

But to his supporters, losing Kopyto would be a great tragedy.

"I would sell my shirt. I would support him to the last drop of my blood," said Sam Bahadori, a 37-year-old Iranian-born construction worker who hired Kopyto in 1985 to represent him in a grievance against his employer.

"I don't know of any other lawyer across this country with more courage than he has," said Kopyto's lawyer Charles Roach.

"I feel if we have the support of the public, it's going to be all right for Harry," Roach said. "And we know if Harry is going to be all right, we are going to be all right."

Some of Kopyto's supporters waved placards that said: "Living proof. No justice for the abused, poor and oppressed" and "Law society harasses fighting lawyer."

Many had tales of woe. One claimed to have been beaten up by the police; another to have lost his business after it was sold out from under him by a bank; still another to have lost her home.

They all see Kopyto as their hero.

Kopyto blames the legal aid overbilling on poor record-keeping and the pressures of his busy law practice. He sees the attempt to have him disbarred as an "attack on all of us . . . not just an attack on me."

DEFEND
HARRY KOPYTO!
March for justice !

*Join a picket line for justice and
support Harry at his Law Society hearing*

When:

THURSDAY, SEPT-28 — 9:30 AM

Where:

OSGOODE HALL

Queen & University

Why:

***To prevent the Law Society from
disbarring a champion of human rights***

... for further information, call 361-1404 (days) or or 322;1664 (evgs)



JAMES LEWIS/The Globe and Mail

A group of supporters of Harry Kopyto, foreground, man a picket line in front of Osgoode Hall yesterday.

Kopyto denies accusation of fraud at law society disbarment hearing

BY MARY GOODERHAM

The Globe and Mail

Sept. 29, 1989

Before the street people, the disadvantaged, civil rights activists and the legal establishment, maverick lawyer Harry Kopyto is making his last stand.

A convocation of the Law Society of Upper Canada sat late into the night yesterday to consider a recommendation that the Toronto lawyer be disbarred for overbilling the Ontario Legal Aid Plan.

The hearing is to resume at 8:30 this morning and continue until 10 a.m.

Mr. Kopyto, 42, sitting beneath a portrait of William Osgoode, first Chief Justice of Upper Canada, told 26 benchers of the law society that he has never knowingly committed fraud while championing the cause of the disadvantaged.

"Every ounce of my energy is dedicated to the law," he told the convocation.

Mr. Kopyto admitted in a statement of fact in July that he had overbilled the legal-aid plan for 2,000 hours of work between 1984 and 1986. He billed the plan for more than 24 hours of work on one day in December, 1986, and charged for about 700 phone calls he never made while working on 423 cases, most of them paid for by legal aid.

Mr. Kopyto said yesterday that his infractions were inaccurately described in a 16-page report by a discipline committee of the law society, which recommended that he be disbarred. The report said he is dishonest, disrespectful of the legal community, bombastic, histrionic and feels that he should be exempted from "rules which govern other lesser mortals."

Mr. Kopyto yesterday said that he did not admit to

knowingly overbilling legal aid but to wrongly "guessing" the times and duration of his work and telephone calls. Such guessing could have led to wrong claims which were "honest mistakes" and could have actually given him less money than he was owed.

"I estimated to the best of my ability. . . . Unfortunately there were inaccuracies," he said.

"I ended up almost becoming a machine trying to serve my clients," he said. "I am a workaholic. . . . I would fall asleep at night with my dictation machine in my hand."

During the proceedings Mr. Kopyto was disallowed from acting as his own co-counsel. He was admonished by the benchers to reply only to questions from his lawyer, rather than to provide a "narrative".

Before the hearing began, a group of about 20 supporters picketed in front of Osgoode Hall, chanting "Hands Off Harry." Observers at the hearing included clients and friends of Mr. Kopyto's as well as lawyers, legal students and his 11-year-old daughter, Erica.

Mr. Kopyto appeared uncharacteristically sombre in front of the convocation but recovered his outspoken nature during breaks in the corridor, declaring to reporters that the law society "is so conservative, they're just to the right of Attila the Hun."

He said that if he is disbarred he will appeal to the Supreme Court of Ontario.

Meanwhile, he said he is writing a book, continues to act for clients without reimbursement from legal aid and has been asked to lecture for law students next week at York University — "barred or disbarred." He said he has already begun taking cases to represent people in labor hearings and other proceedings in which he can take part even if disbarred.

The Law Union & Harry Kopyto: The politics of repression and co-optation

By Eric del Junco

We've all followed Harry's exploits in the media over the last decade, culminating a few years ago with his being charged with contempt of court in connection with the famous "Krazy Glue" remark. That case received an extraordinary amount of media coverage and served an important public education function by raising fundamental issues in a particularly sharp fashion, namely the relationship of the state apparatus to structures of power and the freedom of individuals to comment critically on this relationship.

Because of certain essentially irrelevant features of Harry's position (e.g. the fact that he is a lawyer) and the way in which these issues were framed by the criminal proceedings, there was a great deal of obfuscation of the real issues and it necessarily became a question of lawyers' freedom of expression, etc. Despite this inevitable distor-

— continued on page 8

Law Union silent on Harry Kopyto

— continued from page 1

tion, the entire process was invaluable for raising questions that the judicial system and the state apparatus as a whole would rather remain buried as deeply as possible.

Harry's name was relatively absent from the media for a brief period until this summer, when we began receiving regular dispatches from the nether reaches of that dark continent at Queen and University, a.k.a. the Law Society of Upper Canada. It seemed that Harry had engaged in certain irregular billing practices and that his prospects for continuing his legal practice were not looking very good. We were regaled with stories of Harry's initial antics in front of the Discipline Committee, when he seemed to be determined to outdo his Krazy Glue performance. Then we were disappointed to hear that he had thrown in the towel and signed an Agreed Statement of Facts.

(All of this had an extraordinarily comic aspect when one recalls that at least one judge of Ontario's highest court had virtually invited the Law Society to disbar Harry, notwithstanding the fact that our wonderful Charter of Rights had saved his ass on the contempt charge. Obviously, for the Court of Appeal the general need to uphold the legitimacy of the Charter as a bulwark against state repression overrode the need to get one particularly obnoxious and troublesome lawyer. In this respect the judges of the Court of Appeal proved themselves to be immeasurably more astute than Montgomery, the judge who convicted Harry at trial, who has always had a bit of a rough-and-ready approach to delicate political issues — I guess this is why they get paid more.)

It looked like Harry's last stand, the end of a brilliant career in guerrilla theatre. We were told that the Discipline Committee would prepare a report and recommendation to Convocation on the basis of the Agreed Statement, and then learned (much to our amazement) that the Committee report recommended that Harry be hung by the neck, drawn and quartered ... err, I mean disbarred. Convocation would meet at the end of September to decide Harry's fate.

During this entire saga the silence of the Law Union was deafening. Here was one of our members about to be subjected to professional capital punishment in highly suspicious circumstances, and not a word in any of the official organs of this august organization commenting on the proceedings. Initially I wasn't sure whether the silence should be attributed to a summer "lull" or

whether it was conscious and deliberate. I began conducting an informal survey of Law Union members to glean the official line on Harry and was amazed at the results. When I mildly suggested that it would be rather outrageous if Harry was disbarred, I was met with a barrage of invective from the average respondent insisting that no punishment could be harsh enough. The stated grounds for this view varied from respondent to respondent, but can be generalized as:

1) Opportunism: Harry is politically a poseur and a charlatan, i.e. he is not a "real" leftist but rather an opportunist posing as a leftist, and therefore he does not deserve the support of the Law Union;

2) Personal Venality: Harry is personally sleazy, e.g. he is living in a house on Dunvegan Road with a \$1.4 million mortgage, and therefore he does not deserve the support of the Law Union;

3) Personal Dishonesty: "He shouldn't have done it," i.e. engaged in billing irregularities — this was dishonest and we can't condone dishonesty, and therefore he does not deserve the support of the Law Union.

While conducting this survey I learned that indeed the Law Union's silence was entirely deliberate, that the Steering Committee had debated the issue and decided to take no position and make no public statement in relation to the fate of Harry for reasons similar to those encapsulated above.

I think this position is fundamentally wrong and misguided. The question is not whether Harry deserves our support but whether or not we should support him. It seems to me that the latter question can only be addressed by an objective analysis of Harry's role as a "radical" lawyer and the effect of his disbarment on the over-all political struggle to overcome repressive social relations.

When framed in this way, it seems absolutely clear to me that the Law Union should publicly and vigorously oppose Harry's disbarment because it will have a negative impact on our common struggle and aggravate the repressive conditions against which we are all fighting. This is so regardless of the truth of the three charges against Harry articulated by the poll respondents. Many Law Union members appear to feel personally "betrayed" by Harry in a way that I believe seriously distorts their judgement in this situation. Again, I emphasize that I don't dispute the validity of these feelings of betrayal, only their relevance to the question of whether or not the Law Union should oppose Harry's disbarment.

I think an objective assessment of Harry's career will show that he has assisted our struggle by challenging judicial authority and legitimacy in a way that almost no other lawyer in this province has done, i.e. openly, flagrantly and even insolently. His "Kra-

zy Glue" remark is a perfect example. It was the sheer insolence of the remark that so enraged the judges hearing the case, that made it so difficult for them to finally swallow the bitter pill and let him off.

The reaction of the courts speaks volumes in relation to the question of the effectiveness of this method of criticizing the "system," i.e. it works and they don't like it. It works for a lot of reasons, e.g. it gets media attention. Nevertheless, despite the overwhelming evidence that it works, most of us are simply too scared to get up in court or wherever and shout "the emperor is naked."



HARRY KOPYTO: not afraid

We're all too scared for a lot of reasons but they all ultimately boil down to one overarching reason: we all have careers to worry about and aren't prepared to sacrifice our personal comfort for the sake of telling the plain truth in simple terms that anybody can understand.

This fear will be well known to any leftist lawyer who has conducted litigation in forums that are systemically hostile to the interests he or she is attempting to represent. We have all fantasized about arguments that we would like to make but never will although they would frame the issues far more adequately than "acceptable" arguments. We rationalize our decision not to make these arguments by relying on the "interest" of the client and our own "credibility" in the eyes of whatever adjudicator we happen to be before.

Anticipating howls of protest, I hasten to add that I'm not suggesting that a client's interests should ever be far from our minds in acting as lawyers. What I am saying is that we often use the interest of the client as a smokescreen to hide our own self-interest. We should all recognize that a major reason for the constant self-censorship that we engage in is fear, pure and simple — fear of dis-

grace, humiliation, marginalization etc. Interestingly, these terms capture very clearly the dominant attitude towards Harry within the Law Union, i.e. he's disgraced and should be marginalized. It's astonishing the extent to which we seem to have absorbed the "establishment" reaction in our response to Harry. I guess this shouldn't be surprising in light of the fact that we are all lawyers. I can't think of more compelling evidence of the sheer force of the ideological repression under which we labour as leftist lawyers.

Perhaps partly as a result of his personal idiosyncrasies, Harry wasn't afraid, or so it seemed. This is what made him unique and constituted his invaluable contribution to our struggle. Unlike most of the rest of us he actually seemed to enjoy getting up and saying really outrageous (read "commonsensical") things in a really outrageous (read "direct") manner, and the more the system attempted to crush him the more he seemed to enjoy it. Until some of the rest of us are prepared to follow his example, we'd better think long and hard before we write off lawyers like Harry as mere "opportunists." The reality is that we'll all be worse off without Harry to kick around any more and we'll all find our political space substantially constricted as a result of his forced departure from the profession.

The specific reasons proffered by Law Union members for declining to support Harry in his current predicament are substantially irrelevant to the real issue at hand.

The fact that Harry may be a political opportunist or personally venal has no bearing on the fact that he has been a thorn in the side of the judicial apparatus for many years and that this is the *real* reason that the courts and the Law Society have been trying to get him for years. (Remember, the Law Society, as opposed to certain Law Union members,

doesn't question Harry's credentials as a genuine revolutionary radical. In fact Ian Outerbridge, chair of the Disciplinary Committee that heard Harry's case, went out of his way in his report to give credit to Harry's political commitment. Neither does the Law Society seem overly concerned about the fact that Harry resides in Forest Hill as opposed to Parkdale.) Just as this is the real reason that the legal establishment would like to expel Harry from the club, this is the reason we should resist this expulsion, notwithstanding his alleged opportunism or venality.

On dishonesty, at least two points should be made. First, the Report of the Committee draws an inference of dishonesty from a set of agreed facts that do not con-

tain an admission of dishonesty or even facts that necessarily entail that inference. (Generally speaking, the Committee's report makes for some interesting reading in relation to the persecution hypothesis.) Second, and most importantly, we have to get some perspective here. Accepting for the sake of argument the inference that Harry dishonestly over-billed legal aid, do we really believe that he should be disbarred for this offence?

Remember the lawyer jokes, really all endless variations on the same theme: the total absence of the slightest shred of moral integrity in lawyers as a group. (*Why won't a shark eat a lawyer? Professional courtesy.*) These jokes reflect a fundamental truth about lawyers, i.e. that we are lackeys of a ruling elite that relies on our professional

expertise to perpetuate its own privilege at the expense of the rest of society. Surely as leftist lawyers we wouldn't quarrel with this view of the profession, however much we

might want to exclude ourselves from the picture. It is important to emphasize that it is not the "dishonesty" (in the narrow sense) of individual lawyers that has led to the general perception of the profession as parasitical and ethically bankrupt but rather the systemic relation of the profession to the status quo.

Once we have this picture of the profession firmly in mind, it seems to me that the absurdity of justifying Harry's expulsion from the profession for "dishonesty" becomes patent. We are simply buying into a narrow definition of "professional" integrity

that sacrifices small-time operators who have the bad form to get caught with their hands in the cookie jar and allows the big boys on Bay Street to skim off the cream of corporate profits in the form of multi-million-dollar legal fees. These fees are of course entirely legal and professionally impeccable, notwithstanding the untold human misery that is conveniently disguised behind those profits. Surely until the notion of professional integrity has a little more substance to it than this, we should reject it for the mystifying fraud that it is.

Harry was at worst a small-time operator who had the bad form to get caught at his little scam. Until the Law Society proposes the whole-sale expulsion of the corporate bar, we should hardly parrot the line that Harry has to go because he was "dishonest." In a system as repressive and exploitative as ours, where the rules are so slanted in favour of the ruling elite, "honesty" in its narrow sense of rule compliance is surely a relatively insignificant virtue. We don't have to condone Harry's actions, but we don't have to be tacitly complicit in his expulsion from the profession on grounds as absurd as "dishonesty." The Law Union should urge an appropriate penalty short of disbarment.

Postscript: Since this was written, events have overtaken some of the analysis. Harry was disbarred by Convocation on November 8 in accordance with the recommendation of the Discipline Committee. He has promised to fight the decision "all the way to the Supreme Court of Canada."

Let's make sure the Law Union is behind him every step of the way.

Eric del Junco has practiced labour law on staff with the Teamsters union. He is now practicing part-time and doing an LL.M. at Osgoode Hall Law School.

Bay Street skims cream of corporate profits while Law Society nails Harry

Harry Kopyto Defence Committee

372 Bay Street, Suite 1708
Toronto, Ontario M5H 2W9 (416) 361-1404



October 13, 1989

Dear Friends,

Harry Kopyto currently faces the possibility of disbarment by the Law Society in a hearing scheduled within a matter of weeks. The fate of Harry Kopyto will affect all of us involved as advocates of social change in the area of legal work.

The recommendation to impose professional capital punishment on Harry was made by a Discipline Committee chaired by Law Society Benchers Ian Outerbridge. Revealing the true import of the decision, Outerbridge wrote as follows in his decision recommending disbarment of Kopyto:

The Committee panel was of the view that the Solicitor in his conduct before ... the media during the hearings and in his conduct and statements made and issued on his behalf during the hearings, was guilty of contempt...

...The public are watching and others in the wings are also watching to see whether or not such behaviour is standard or even acceptable or something which will be tolerated. It is imperative that it be shown to be something which will not be tolerated.

The profession, itself, needs a strong signal as to the seriousness with which discipline proceedings are to be viewed...

There are a few members of the bar who subscribe in whole or in part to the type of strategies, behavior and conduct demonstrated by the Solicitor. This behavior is at times displayed in our courts and there exists an obligation on the Society to make a statement of disapproval.

Those of us who have followed Harry's professional career over the last 15 years know the Law Society charges follow an eight year battle by Harry to bring RCMP security service officers to justice for crimes committed in the 1970s. Though he lost his battle in the courts, he was cited for contempt for exposing the bias within the judicial system in favour of the RCMP. While acquitted of the

charge by the Ontario Court of Appeal in 1987 in a decision which abolished the offence of "scandalizing the court" the Court of Appeal acquitting Kopyto explicitly called for the Law Society to take action against Harry.

Within weeks, Harry was facing a multiplicity of charges from the Law Society. The Law Society constructed a case against Harry based on the inadequacies of Harry's records of details in his legal aid accounts. The Outerbridge discipline panel totally disregarded Harry's uncrossexamined explanations that the work was substantially performed, and found Harry guilty of intentional fraud. This finding was not at all supported by the Agreed Statement of Facts submitted.

Harry had pleaded guilty to being negligent in failing to keep contemporaneous detailed records of meetings and phone calls with clients and others between 1984 and 1986 when he took on likely more clients than any other lawyer in Ontario under the legal aid plan. He put the interests of his clients and their need for justice above his own financial interest in keeping accurate records. This situation was totally distorted by a decision which had the effect of improperly maligning the reputation of someone we all know as a courageous fighter for social justice.

Kopyto's professional fate will have a major impact on the willingness of others to criticize the courts and the police, to emphatically represent the disadvantaged and indigent and to speak boldly against perceived injustices within the judicial system.

A strong presence by lawyers, law students and the public at the next meeting of the Law Society of Upper Canada Benchers which will decide his fate may be vital to Harry's defence. Harry has never hesitated to rally behind those who needed solidarity and support in the past. Now we are challenged to stand behind him. Professional capital punishment of Harry would mark a serious setback for the rights of all persons involved in working for social change within the legal system. His stay of execution would mark a major victory for all of us. Your support is needed.

Fraternally,



Charles Roach,
Barrister & Solicitor

Column was inaccurate about my billings, and founding left-wing group, reader says

It looks like Rob Martin got some of his facts wrong ("Kopyto has betrayed and insulted progressive lawyers," Counterpoint column, Oct. 3, 1989).

I pleaded guilty to negligence and was found guilty of fraud—a fundamental defect in the disciplinary process which results from the fact that only two charges—professional misconduct and conduct unbecom-

ing—can be laid.

Firstly, I did not bill the Ontario Legal Aid Plan for services which were not performed.

The 2,000 hours referred to in the Agreed Statement of Facts contained inaccuracies as to time and place, not to services not performed.

Aside from some negligent errors, reflecting less than one per cent of the

total services billed for, I did not bill for any services inaccurately to my benefit.

I represented more clients under the Ontario Legal Aid Plan than any other lawyer between 1984 and 1986.

My records were incomplete, I underestimated and chose not to bill for services which I was not confident were, in fact, performed.

With hindsight, I admit that I should have kept accurate records of dates, telephone calls and meetings so that the services performed could have been billed for on the correct dates and times.

It is truly unfortunate that Rob Martin should be sucked in by the misinformation spread by the media and by the report of the Outerbridge discipline panel to the effect that I intentionally defrauded the plan.

The Outerbridge decision, as well as Martin's misapprehension as to the true events is completely in contradiction to the Agreed Statement of Facts which attributes inaccuracies to a pattern of guessing at services performed, not dishonest overbilling.

The inaccuracies did not benefit me in any way nor were they intended to do so. The inaccuracies resulted simply from placing my clients' interests ahead of my own.

For this reason I ended up not leaving myself enough time to accurately record all the services performed—especially telephone calls and meetings.

However, Rob Martin is really off the mark in stating that I did not found the Law Union which came

into existence solely as a result of efforts exerted by me to bring together in the fall of 1970 various persons to form a group of progressive lawyers who eventually undertook to organize the first and largest protest against the *War Measures Act* in Canada in October 1970.

The earliest meetings of the Law Union, the earliest actions of the Law Union and its essential political orientation were shaped by myself in collaboration with others at the University of Toronto Law School.

There was never a collapse of the law union arising from my actions. Martin's statement to that effect is totally without foundation or insight.

Rob Martin would like the world of progressive lawyers to be made up solely of persons without any faults, always able to keep meticulous records of all their services performed notwithstanding the pressures of trying to serve hundreds of clients whose needs are often urgent and must be met immediately. I could not do so. I plead guilty.

To the charge of fraud, I plead not guilty.

To the charge that I was not the initiator and organizer of the alternate left Bar in Ontario, the record will speak for itself.

To the suggestion that any interruption of my law practice is not aimed at other social activists practising law in Ontario and Canada, I ask only that Rob Martin open his eyes to reality.

Harry Kopyto
Toronto

November 6, 1989

Secretary
Law Society of Upper Canada
Osgoode Hall
Toronto, Ontario

Dear Sir:

As members of the legal profession, we wish to express our concern at the failure of the Law Society to promulgate a code of offences and the penalties for each offence to which lawyers may be liable.

At present, only two offences are recognized - professional misconduct and conduct unbecoming a member. Penalties can range from a reprimand in committee to disbarment. The failure to enumerate with sufficient clarity the offences and penalties affecting lawyers can be abused.

The case of Harry Kopyto illustrates the potential for such abuse. It is our understanding that Mr. Kopyto admitted guilt to negligently submitting inaccuracies in his accounts to the Ontario Legal Aid Plan between 1984 and 1986. Notwithstanding that plea and an Agreed Statement of Fact upon which it was based, he was found guilty of fraud by a Discipline Panel. The recommendation was made that he be disbarred presumably because of this fraud.

In our opinion if the above is correct, such a miscarriage of justice could have been avoided by the enunciation of a code defining each offence and an appropriate range of penalties for each offence. The absence of such a code places arbitrary authority in the hands of the Law Society and can bring the Law Society's discipline process into disrepute.

Accordingly, we urge the Law Society to rewrite its rules and regulations to provide clear guidance to the profession with respect to the categories of offences which lawyers may face, to specify the conduct being prohibited and to establish limits on the penalties which the Law Society may impose.

Yours very truly,

YOSSI SCHWARTZ

BARRISTER AND SOLICITOR

CHARLES ROACH

BARRISTER AND SOLICITOR

STAN EHRLICH

BARRISTER AND SOLICITOR

JACK PINKOFSKY

BARRISTER AND SOLICITOR



IN THE MATTER OF The Law Society Act;
AND IN THE MATTER OF Harry Kopyto of the City of
Toronto, Barrister and Solicitor;

THE LAW SOCIETY OF UPPER CANADA

I have carefully read the draft reasons of the majority of Convocation in this matter. In concluding that I must dissent from those reasons I am aware that there is no precedent. It is worth noting that Convocation has just recently adopted a new policy regarding the issuance of written reasons for discipline decisions and therefore there has been no history of any written reasons, majority or otherwise. In any event, I am so fundamentally in disagreement with the majority

IN THE MATTER OF The Law Society Act;

AND IN THE MATTER OF Harry Kopyto of
the City of Toronto, Barrister and Solicitor;

Committee that I am compelled to dissent. In coming to my conclusions I have reviewed the original Complaint, the transcripts of the Proceedings before the Committee and Convocation, the Solicitor's Notice of Objection and the case law provided by counsel as well as both Decisions.

To understand this case fully I believe it important to know its history. The Solicitor was originally the subject of a Complaint dated on the 10th of September, 1987 which particularized professional misconduct in that he

which appear as 2(a)(i)-(vi) in the Complaint. The Complaint was based around plagiarizing legal research. The Complaint was filed as a Complaint of Professional Misconduct by the Law Society of Upper Canada.

REASONS FOR DECISION

OF CONVOCATION - DISSENT

arranged accounts to Legal Aid. The Complaint was withdrawn and a new Complaint was filed. The new Complaint was substantially similar to the one provided for as it contained paragraphs (b) and (c) which were later withdrawn. The first line of the first line of the particularized allegations that he arranged accounts to Legal Aid.

In the amended Complaint the word "deliberately" has been replaced and "inflated" has been replaced by "inaccurate". The Complaint alleges the Solicitor prepared accounts "the amounts are inflated so as to be inaccurate" which he nevertheless submitted to the Ontario Legal Aid Plan for payment. The particulars are then set out in 4 paragraphs. The Complaint relies upon and is only made out by the facts set out in the Complaint. The Complaint is made out by the facts set out in the Complaint. The Complaint is made out by the facts set out in the Complaint. The Complaint is made out by the facts set out in the Complaint.

November 14, 1989

IN THE MATTER OF The Law Society Act;

AND IN THE MATTER OF Harry Kopyto of the City of
Toronto, Barrister and Solicitor;

I have carefully read the draft reasons of the majority of Convocation in this matter. In concluding that I must dissent from those reasons I am aware that there is no precedent. It is worth noting that Convocation has just recently adopted a new policy regarding the issuance of written reasons for discipline decisions and therefore there has been no history of any written reasons, majority or otherwise. In any event, I am so fundamentally in disagreement with the majority in Convocation, as well as the Discipline Committee that I am compelled to state my reasons for disagreement. In coming to my conclusions I have reviewed the original Complaint against the Solicitor, the Amended Complaint, the transcripts of the proceedings before the Committee and Convocation, the Solicitor's Notice of Objection and the case law provided by counsel as well as both Decisions.

To understand this case fully I believe it important to know its history. The Solicitor was originally the subject of a complaint sworn on the 10th of September, 1987 which particularised professional misconduct in six paragraphs which appear as 2(a)i-vi in the Complaint. The first five complaints centered around plagiarizing legal research and subsequent behavior surrounding those complaints. The final complaint was that the Solicitor was guilty of Professional Misconduct by " (vi) deliberately preparing and submitting erroneous accounts to Legal Aid" (Emphasis here and elsewhere is mine). This complaint was withdrawn and a new complaint was sworn on January 31, 1989. This new complaint was substantially similar to the one proceeded on except it contained paragraphs (b) and (c) which were later withdrawn. Most importantly, the wording in the first line of the particulars alleges that he deliberately submitted inflated accounts.

In the amended Complaint the word "deliberately" does not appear and the word "inflated" has been replaced by "inaccurate". The Complaint asserts the Solicitor prepared accounts "the amounts and details he knew to be inaccurate but which he nevertheless submitted to the Ontario Legal Aid Plan for payment." Particulars are then set out in 21 examples. The Complaint relies upon and is only made out by the facts set out in the Agreed Statement of Facts. How and why the inaccurate accounts came to be rendered are answered in Paragraph 4 of that document as follows:

The Solicitor took sole responsibility for the preparation of his Legal Aid accounts, by dictating tapes of the account entries; the accounts were then typed by his secretary. In the years 1984 to 1986 the Solicitor was extremely busy taking on numerous clients. **The Solicitor failed to keep accurate and complete dockets of the services he performed, especially with respect to telephone calls.** One client who kept **meticulous notes** of relations with the Solicitor **recorded services, telephone calls and meetings** which the Solicitor **failed to include on his accounts** to the Ontario Legal Aid Plan.

The Solicitor adopted as a billing practise, guessing at the services performed, estimating the time taken to perform those services and the times when those services were rendered, thereby creating inaccurate accounts. In stressing the words that were amended, I note that clearly the Solicitor and Counsel for the Society negotiated an admission to conduct that was not deliberate.

The Agreed Facts state that the Solicitor **suspected** that his billing practises **could** result in overbilling of Legal Aid but did not attempt to inform himself as to whether or not this was happening. This statement was clearly regarded as the pivotal one by both the Committee and Convocation who concluded that the Solicitor knowingly misrepresented the facts to Legal Aid intending that they act on those facts to their detriment and his profit, therefore committing a fraud, I disagree. It goes without saying that one who knowingly guesses and estimates must realise that his results will not be precise. That lack of precision can result in an error upwards in his estimates or downwards. It will almost certainly never be right on. By virtue of the fact that he had to guess and estimate from incomplete and inaccurate dockets the Solicitor would have to suspect that he could be overestimating at times, just as he would have to suspect that he could be underestimating at times. It is inherent in the process of guessing. If he did not have such suspicions he would not have believed himself to be estimating. He would have thought that he was being absolutely accurate. I find that although estimating, the solicitor clearly believed in the essential truth of his accounts and therefore the facts do not fit into the definition of fraud in Derry v. Peek 14 App. Cas.337.

It is also clear from the Agreed Facts that there was a sorry lack of hard evidence from which the Solicitor could reconstruct his accounts. The Solicitor's evidence was that he estimated honestly and as best as he could from his memory and whatever else there was in the files that could assist him. Although it was quite clearly undesirable and unprofessional of the Solicitor to allow himself to have arrived at that state of affairs it is difficult to imagine what he was supposed to do in most cases to "inform himself" if he was overestimating or not. Clients generally would not have even the incomplete records the Solicitor had and would not be aware of much of the work done on the file by the Solicitor. Other lawyers who did work on a file may or may not have had an independent recollection of the time spent on the file outside of their dockets. While it would obviously be preferable to have checked with collateral sources on all billing matters, in the absence of evidence of a dishonest intent on the part of the Solicitor, I cannot find that this omission leads to the conclusion that the Solicitor was willfully blind to the facts and intended to overbill.

I have concluded that both Convocation and the Committee misperceived the use that could be made of the Solicitor's evidence given on the Penalty portion of the Hearings. All of the facts in support of the finding of Professional Conduct were before first the Committee, then Convocation, before the Solicitor called any evidence. As reviewed earlier the explanations for the inaccurate accounts were spelled out in the Agreed Facts: guessing and estimating from inaccurate and incomplete dockets. Even if the Solicitor's evidence is rejected completely those explanations in the Agreed Facts remain and cannot be rejected without striking the admission of Professional Misconduct as well. It was not open to the Committee and Convocation to use Sentencing evidence to fundamentally change the facts admitted **no matter how skeptical** they might have been of those jointly agreed to explanations. It is clearly spelled out in the

Transcripts of the Hearing before Convocation that while the Solicitor, like any other in the same position, was at liberty to give evidence in relation to the Agreed Statement of Facts it was to put it "into context, to provide the framework for the submissions he will make with respect to penalty." (Transcript September 28, Pg.69 line 21-33).

I note that the Solicitor and his Counsel repeatedly adopted the Agreed Statement of Facts at both stages of the Discipline Hearing and that Counsel for the Society never objected that the Solicitor was attempting to repudiate those facts. I do not find that the Solicitor's explanation was at variance with the Agreed Statement of Facts. There was not one piece of evidence called by the Society's Counsel to repudiate the Solicitor or to suggest that he acted dishonestly for a dishonest purpose. The Statement of Facts discloses no such motive, and the Solicitor admitted no dishonesty.

The Reasons of Convocation places some emphasis on the extent of the inaccuracies and the admitted fact that his billing practise resulted in the billing of over 2000 hours that should not have been billed. There is the considerable evidence of the Solicitor which put those hours into context. Other than the examples give in Paragraph 9 of the Agreed Statement, there are no details given of how the parties arrived at that figure. We did not have the accounts before us in evidence. We were not told how many hours were disallowed as being in excess of the tariff, how many hours were described incorrectly, how many hours were for time that the Solicitor claimed to have spent on the file but could not be backed up with the necessary dockets and details of hours spent. In the absence of these details and any evidence suggesting dishonest conduct, I cannot find that the disallowance by the Ontario Legal Aid Plan of these hours, or roughly one third of the Solicitors total, can lead to a conclusion of dishonesty. My experience is that it is frequently difficult to discern why accounts have been reduced or (as is sometimes the case), increased. It has not been the practise to discipline lawyers by the mere fact that an

account has been reduced by as much as one third by either Legal Aid or, in the case of private retainers, the Taxing Master or Examiner. There must be, in addition, evidence of wrongdoing. It is noteworthy that there were 423 accounts examined here and the total reduction of hours amounted to under 5 hours per file. Given the evidence heard about the complexity, importance and difficulty of many of the Solicitor's cases, I cannot find that prima facie the account of those hours must lead to a conclusion that they were deliberately prepared, knowing that they were false.

Similarly I find that any attempt to calculate what the Solicitor should have been billing based on what the average solicitor bills or what the average Benchers' experience is, is both unhelpful and highly untrustworthy evidence. We know that the Solicitor's accounts were allowed at a rate well above the Canadian Bar Association average. What is reasonable can only be determined by looking at each individual lawyer's particular practice. Here the uncontradicted evidence is that the Solicitor worked exceedingly long hours almost continually, that he took work on vacation, that he was constantly on the phone (sometimes carrying on more than one conversation at once). Having heard the Solicitor give evidence I can accept that his phone conversations could be quite lengthy.

As I have already indicated it was not open to Convocation to make findings of fact based on evidence heard on the question of Penalty and apply it post facto to the admitted Misconduct Facts. But Convocation went beyond that in finding against the Solicitor for not calling independent evidence that he performed the services for which he billed (Decision Pg. 19 Paragraph 2.) This finding is wrong, I suggest, as it shifts the Burden of Proof to the Solicitor and in effect requires him to prove his innocence. As well it requires him to call evidence that goes to the Misconduct on the Penalty Hearing where it had no place. It is particularly regretful that the evidence of Mr. Kopyto's

accountant was interpreted in the way that it was. Mr. Norman testified about the Solicitor's "complete integrity" and his "sticking to his guns because he feels he's doing the right thing". (Transcript, September 28, Pg 327-8), Mr. Norman used the Solicitor's decision not to have him as his Accountant review his books as an illustration of the Solicitor's "sticking to his guns". Convocation appears to have turned it around into evidence that he was hiding something. It also ignores the Agreed Fact that the Solicitor's records were incomplete and inaccurate and therefore likely of little value to an accountant.

In concluding that the Solicitor must be disbarred the Discipline Committee made numerous derogatory comments about the Solicitor calling him "histrionic, bombastic", "patently dishonest". The Committee suggested that the Solicitor wanted "to tear down and smash" the legal process. He was accused of "repudiating himself with less difficulty and discomfort than is involved in changing his coat." In my opinion these remarks and others in a similar vein were unnecessary, irrelevant and unhelpful. They illustrate a level of antagonism toward the Solicitor that was inconsistent with an objective detachment and could only give rise to a reasonable apprehension of bias on the part of the Committee towards the Solicitor. The Solicitor's Motions for a new Committee to deal with penalty should have been granted. The Committee completely misinterpreted the agreed evidence of Brenda Ross which points away from dishonesty and supports the Solicitor's position. Indeed Convocation appears to recognize the problems with the Decision by virtually ignoring the Decision and coming to its decision "entirely independent of the Committee's reasons for recommendation as to penalty." Yet having said that, Convocation came to the same conclusion as the Committee, that the Solicitor was dishonest. With respect, I find that there was no admissible evidence for that finding to be made at either stage, and that at both stages the disbelieved evidence of the Solicitor was used not merely to discredit that evidence, but used as evidence of dishonesty; a use of which they were not entitled to make.

The Solicitor's discipline record was used at both stages to support disbarment. His first offence was before he became a Solicitor and his name was not published, (presumably to protect him from the unwarranted consequences of being branded forever for the consequences of an indiscretion as a student). The offense, cheating at an exam was not used as a bar to his admission to the Society. Given that the offense was 16 years ago and the Solicitor was not yet one, it should be given little weight. It is perhaps analogous to an old and minor Youth Record's relevance on an adult criminal matter. The second matter was a Reprimand in Committee for failing to attend court personally when so ordered by a District Court Judge. (Transcript August 11 Page 11 - 12). It is not an offense of dishonesty and I find it is of minimal relevance to this proceeding.

In viewing the entire facts here and deciding whether they justify disbarment I adopt the principles set out in Schumiatcher v. Law Society of Saskatchewan 58 W.W.R. 465 at page 477:

When a complaint is made against a solicitor which may result in his suspension or disbarment, effect should not be given thereto unless the grounds of the complaint are established by convincing evidence, and when the complaint involves a criminal act, by evidence beyond a reasonable doubt. In the assessment of the evidence, the solicitor's explanation should be accepted if there is a reasonable probability of it being true.

In this case I would conclude the following:

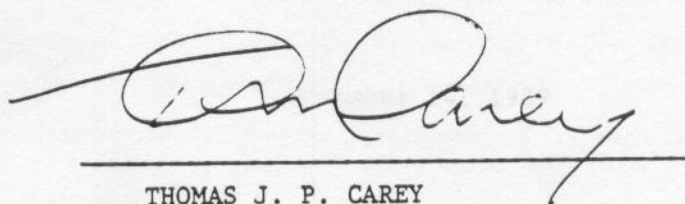
1. There was no evidence that the Solicitor intentionally prepared false accounts.
2. There is no evidence of bad character. In fact all of the considerable evidence on the issue is of good character and honesty.
3. The onus in presenting the evidence rested with the Law Society.
4. The Agreed Statement of Facts was uncontradicted that the accounts were prepared as a result of the Solicitor guessing and

estimating due to inadequate records.

5. It was never suggested by Counsel for the Society that the Solicitor was repudiating the Agreed Facts. There was no cross examination on his explanations.
6. The Solicitor entered a plea after much negotiation to a complaint that did not contain words that alleged fraud or dishonesty and it was not urged upon Convocation by Society's Counsel to find that there was fraud or dishonesty.
7. The evidence as a whole of the Solicitor was credible, had a reasonable probability of being true was not cross examined by Counsel Brown v. Dunne (1893) 6R.67 and should have been accepted.
8. There is no evidence of any criminal charges having been laid.
9. The complaint was amended to describe "inaccurate accounts" from "deliberately submitted inflated accounts". I find inaccurate to mean "not precise".
10. Counsel for the Law Society took no position on Penalty. It would be inconsistent with their duty to the Society to make no submissions in circumstances that they felt clearly warranted disbarment.
11. If any of the facts are unclear or ambiguous the ambiguity must be resolved in favour of the Solicitor. If the facts here had revealed a "\$150,000 Legal Aid fraud", or any fraud, I would have had no hesitation in supporting the penalty of disbarment.

For the reasons given I believe this was not a case where disbarment or a lengthy suspension should have been imposed.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 14th DAY OF November 1989.



THOMAS J. P. CAREY

Kopyto Vows to Return to Practice

by BETSY POWELL
Special to Law Times

Like Mike Tyson refusing to admit defeat, Harry Kopyto says his disbarment was a



Harry Kopyto

devastating blow but not a knockout punch.

More than three months have passed since the Law Society of Upper Canada disbarred the bombastic lawyer for fraudulently billing On-

tario's legal aid plan.

Kopyto asserted throughout the proceedings he was simply negligent in his paperwork. The society disagreed and found him "reckless in the extreme or wilfully blind to the consequences of his conduct." It said his overbilling victimized those he claims to represent — the needy.

But despite the harsh rebuke, the 43-year-old is protesting his innocence louder than ever, saying he has been the victim of harassment by a group of "elite lawyers hell-bent on getting" him.

"Harry Kopyto is alive and well and will soon be back in the legal profession," he vowed confidently in an interview in his Bay Street office last week.

"The initial shock of my disbarment is wearing off," he said. And while Kopyto has had to remove his name from the office door, he said he continues to act as a "legal agent" for clients who can't afford a lawyer. He planned to ask a District Court judge on Feb. 19 for permission to give a woman legal advice when she makes her court appearance.

Kopyto had been scheduled to appear in Divisional Court on the same day in an attempt to overturn his disbarment, but the case has been adjourned pending the outcome of his constitutional challenge to have the law society's discipline proceedings against him declared invalid.

Kopyto maintains he was duped into believing he was pleading guilty to negligence when he signed a statement of fact admitting to billing legal aid for work not done.

"I worked out my deal and then they stabbed me in the back. I pleaded guilty to negligence and I was found guilty of fraud."

Kopyto said he's "hopeful" public pressure and growing support in the legal profession will result in a favorable judicial decision. "I'm confident it's not just a shot in the dark," he said, pacing behind his large wooden desk.

The law society, meanwhile, is proceeding with an application to dismiss Kopyto's lawsuit to collect \$150,000 from legal aid for work he says he was not paid for while he was

under investigation.

His suit also claims he is entitled to \$300,000 for work he has performed but for which he has not yet submitted bills.

However, the unpaid invoices piling up on his cluttered desk won't wait for the suit's outcome, he admitted. Facing what he called "financial destitution," Kopyto said he's earning barely enough money to keep himself "in sunflower seeds."

"The rent has not been paid," he said, picking up a pile of envelopes, "Here's two for hydro, my wife's and mine, here's a couple of tax bills," he said, fanning them like a deck of cards. "I'm in a continuous state of financial crisis," said Kopyto, who is also in the process of divorcing his wife.

Yet the self-described champion of the downtrodden and dispossessed is still calling a \$1.4-million Forest Hill mansion his home. But that's only temporary, he insisted.

"It's up for sale and has a second mortgage. There are open houses every Saturday and Sunday."

Meanwhile, Kopyto has been watching the Lang Michener affair unfold with great interest, saying it illustrates what he's been saying all along. "It underlines the unfairness inherent in the law society discipline process."

"Burke Doran doesn't even get charged, but an outsider like Harry Kopyto gets sizzled and oiled," he said referring to Doran's alleged role in the controversy which has shaken the legal profession. Doran has since given up his job as a benchman while an inquiry investigates how the society handled the affair.

"There's a crisis of confidence in the impartiality and fairness of the law society discipline process," he continued, folding his arms across his chest, "much of it stemming from the awareness that members of the old boys' network get favored treatment."

Kopyto's solution is simple: do away with the self-regulation of lawyers. "Put it into the hands of the public, away from the tiny elite. The conservative members treat it as a little fiefdom which is why you get selective prosecution," he said.

"If it doesn't change, it's going to continue." **11**

5

Kopyto
Vows to
Return



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Stock Talk
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MEDIA JUSTICE: GUILTY

REPORTS

EDITED BY STEPHEN BREARTON, DEBORAH MELMAN-CLEMENT AND CHRISTINA STANSBURY

Toronto lawyer Harry Kopyto offers his media storehouse like a host ushering a guest to the buffet table. "What do you need?" he asks. "Print? Video? Radio?" The chubby 42-year-old proudly claims that more than 1,000 articles about him have appeared in local papers during his 15 years as a lawyer.

In Kopyto's study, where he keeps part of his collection, huge framed photographs of Karl Marx and Vladimir Lenin glare down from the walls. Another picture shows Kopyto standing on the edge of a rocky shore, his black gown flapping dramatically in the wind.

For reporters, this avowed socialist is a quote machine on fast forward. Every sentence is powered by indignation, and blasts at the judicial system jump effortlessly from his mouth. "Most judges are so conservative, they're just to the right of Attila the Hun." Or his most famous line: "The courts and the RCMP are sticking so close together you'd think they were put together with Krazy Glue."

Harry Kopyto makes colorful copy, but his outbursts aren't just witty metaphors aimed at getting smothered giggles in courtrooms. He is ever conscious of the media's usefulness. And judging by his library walls insulated with clippings and audio and video tapes of his media coverage, it's a game Kopyto knows well.

As a lawyer championing the cause of the poor, Kopyto has doggedly phoned reporters, invited them to his rallies



KOPYTO: HERO OF THE POOR AND MEDIA MANIPULATOR

PEOPLE

THE IMPORTANCE OF BEING HARRY

by MI-JUNG LEE

and called news conferences to vent outrage over his court battles. Recently, though, in a controversial bout with the Law Society of Upper Canada, the outspoken Kopyto lost. The self-governing body for Ontario lawyers disbarred him for overbilling the Ontario Legal Plan by \$150,000 between 1985 and 1986. Kopyto has appealed the decision and is waiting for a hearing date to be set.

Gord Doctorow, a longtime

friend, considers Kopyto an expert at manipulating the media. "He's not trying to do it to make Harry Kopyto a cult figure. He always educates people, always draws political and social connections to the class-biased system."

Globe and Mail reporter Kirk Makin also acknowledges Kopyto's skill at getting his name in the paper. But, he adds, Kopyto is losing his sense of perspective because of all the publicity. He notes that

Kopyto's "outrage at his cases has become louder, more frequent and more provocative."

Donn Downey, another *Globe and Mail* reporter, says Kopyto's constant stunts make him a bit of a joke among the media. But Kopyto counters, "I have a better track record than most lawyers. I've won cases that other lawyers wouldn't even take on."

Ironically, the announcement of his disbarment signalled the height of Kopyto's media coverage. Although he has appealed the Law Society's decision, his successful relationship with the Toronto media may nearly be over.

Kopyto brandishes another article, a tongue-in-cheek story written during his disbarment hearings. The lead paragraph rings with his favorite theme: "Harry Kopyto, lawyer for the poor, the unwashed and the dispossessed...." Kopyto was so pleased with the story that he plastered it on the back of a pamphlet he handed out to encourage supporters to come to his hearing.

He missed the subtle irony of the article, just as some may miss the self-effacing humor tucked into the cracks of his heroic language. "Without them [his supporters]," Kopyto says, "there's no Harry.... I'm the reincarnation of their own spirit and determination."

"I don't need articles about me," he says. "I don't need to be on TV. I do what I have to do. If it attracts attention, so be it.... By the way, would you like to see another biography of me?"

TORONTO STAR

APRIL 21, 1990
1990

The state snooping case Caplan forgets

Elinor Caplan wants to know why civil libertarians object to her plans for a cradle-to-grave health insurance card.

She should remember Ross Dowson.

Caplan is Ontario's health minister and she thinks the new card, with its unique identifying number, will curb health insurance fraud.

Dowson is a 72-year-old Marxist whose life was disrupted by an RCMP dirty tricks operation launched during the 1970s.

It was an operation using medical information that was supposed to have been kept confidential, the kind of operation that could be given a big boost by the new Caplan number.

This week, Caplan's ministry began to mail out registration kits. Recipients are supposed to fill out the forms in order to establish a permanent health card.

Each card will contain a number that will remain with the bearer through life. It is similar to the social insurance number used on income tax forms, but more comprehensive.

Not everyone has a social insurance number; a person gets it only when he works for wages, receives certain kinds of income or files tax returns.

But almost everyone goes to the doctor at least once in his life.

Health ministry officials have never liked the current system, whereby individuals are assigned new Ontario Health Insurance Plan numbers when they marry, divorce or leave home. That has created about 27 million numbers, more than three times the number of residents in the province.

This does not necessarily mean the extra 18 million numbers are being used by someone else. Indeed, most are probably inactive.

But the ministry has long thought



Queen's Park

Thomas Walkom

the current system messy, inelegant.

A few weeks ago, health officials made headlines when they speculated that the system may allow cheats to bilk OHIP of millions of dollars a year. That sounded bad.

Then the Ontario Provincial Police confirmed they were investigating cases where OHIP cards were allegedly being sold on the street for drugs. That sounded worse.

However, it is instructive to keep in mind that there has been so little evidence of this alleged OHIP fraud by patients that no case has ever been brought to court.

So maybe there is not that big a problem with the messy system with the 27 million numbers.

SURVEILLANCE KEY

There is, however, a problem with the personal identification number. As history professor David Flaherty told The Star's Lois Sweet recently, such a comprehensive identifier "is the key to the creation of a surveillance society".

That is because it allows anyone with access to the OHIP computers to keep track of every Ontario citizen who has ever seen a doctor.

Privacy advocates have warned that private sector firms will quickly take advantage of the new number. For instance, they may demand it from consumers who want a credit card.

Inexplicably, Caplan is not

introducing legislation to prevent that kind of abuse.

But there is also a serious problem involving the state. Governments and their police forces like to snoop. They prove that time and time again.

Ontario law already allows police to seize certain kinds of medical information from OHIP as long as they possess a warrant and as long as it is for a specific Criminal Code case.

But governments and their agents often want to know more about private citizens than the strict letter of the law permits.

Which brings us to the sad, long case of Ross Dowson.

Dowson is a Marxist, a follower of the late Russian revolutionary Leon Trotsky. In 1972, he was chairman of a Trotskyist organization called the League for Socialist Action.

Marxism is out of fashion now. It wasn't in 1972. That was a time of anti-Viet Nam war marches in the United States and student protest here.

Some gravitated to the League for Socialist Action and its youth wing, the Young Socialists. Dowson had started the forerunner of both with veteran's credits in 1945.

The RCMP was also taking a renewed interest in Trotskyists. In 1970, the force's security service managed to obtain confidential health information about John Riddell, an up-and-coming league member.

In a later court case, former RCMP officer Ronald Yaworsky testified the force had concluded Riddell was a security risk. The RCMP decided therefore to disrupt the socialist organization and force Riddell out.

The information about Riddell showed that he and his wife had consulted a psychiatrist. The RCMP used this to draft three anonymous

letters over two years attacking Riddell.

The police aim, as Mr. Justice Horace Krever wrote later in his report into the confidentiality of Ontario health information, was "to sow dissension, disruption and distrust" within the organization.

It worked. In 1972, the League for Socialist Action fractured. The reasons appeared to be ideological. One faction, including Dowson, wanted to support the New Democratic Party electorally. The other, led by Riddell, wanted to give the NDP only "critical and conditional" support.

The league might have survived this arcane debate intact except for the RCMP letters. According to Harry Kopyto, a league member and later Dowson's lawyer, the RCMP activities had so poisoned the atmosphere that the organization was unable to stay together.

RCMP ADMISSION

In 1977, following a series of newspaper articles alleging that the RCMP and others had gained illegal access to OHIP files, the Ontario Conservative government set up a public inquiry under Judge Krever.

The RCMP told the inquiry the allegations were false. Then Dowson and Kopyto brought the Riddell case to their attention and the RCMP changed its tune.

Yes, the Mounties conceded, they had routinely and illegally made use of confidential OHIP information. So had private investigators, insurance companies and others.

As it turns out, Krever concluded that the specific information about Riddell did not come from OHIP. He made that finding on the basis of

secret RCMP documents never made public. But he also said he did not consider RCMP information to be always accurate and reliable.

In 1980, Krever issued his report. He concluded that cradle-to-grave medical identification numbers would be all right, as long as sufficient safeguards were put in place.

Because his was a provincial inquiry, however, Krever was never able to address fully how information would be protected from federal police — either the RCMP or its successor in the counter-espionage field, the Canadian Security Intelligence Service.

Meanwhile, Dowson pursued the RCMP through the courts for eight years, finally appealing to the United Nations. He lost every time.

For years, Queen's Park deemed it unwise to raise again the notion of a personal identification OHIP number. But voters have short memories.

Now Caplan is quietly going ahead with the idea. She thinks there is nothing wrong. The 1970s and the dirty tricks of the RCMP seem lost in history.

But the potential is there. No matter that there is a privacy commissioner dedicated to preserving confidentiality. No matter that there are laws and regulations.

The potential is there because the system of computerized tracking of identity cards is there.

This is not paranoia. This is, unfortunately, reality. Ross Dowson, who is in hospital recovering from a stroke, knows that. So should Caplan.

□ How Supreme Court is quietly assuming role of privacy champion. Page D4.

Kopyto not guilty -- a victim of law society's bias

By Gord Doctorow
Oriole NDP

Harry Kopyto, a prominent and active member of the Left Caucus Steering Committee of the Ontario NDP, was disbarred by the Law Society of Upper Canada on Nov. 8, 1989. The reason given was that Harry ostensibly defrauded the Ontario Legal Aid plan of some \$150,000. The Left Caucus Steering Committee reviewed the Disciplinary Committee's Report, the report of Convocation (the group of lawyers selected by the Law Society to impose sentence), and the dissenting report of one member of Convocation, Thomas J. P. Carey. The Steering Committee decided to state its support of Harry in this clarifying article.

It is ironic that shortly after the disbarment of Harry Kopyto by the Law Society of Upper Canada, this powerful group itself has been experiencing scandal and investigation of its practices. The Society is being scrutinized with respect to favoritism in prosecutions and improper procedures. Moreover, one of its most prominent members resigned in March after declaring personal bankruptcy. That benchler, Ian Outerbridge, had in fact headed the 3-person Discipline Committee that had investigated Harry Kopyto and recommended his disbarment.

The drama is clearly drawn by the clash of the two ideological protagonists: Harry Kopyto, the socialist radical lawyer who fights the system in the courts mostly through Legal Aid billings; and Ian Outerbridge, the quintessential corporate lawyer who made his money by representing such clients as Leonard Rosenberg, the convicted fraud artist who illegally used monies from Crown Trust Co. and Greymac Trust Co. to make speculator's profits on apartment buildings. Kopyto is forbidden to practice law. Outerbridge may continue despite the fact that there is a suspicion that hundreds of thousands of dollars, perhaps millions, have not been accounted for.

Two lawyers, both accused of mishandling funds, the Establishment lawyer judging the Anti-Establishment lawyer -- the punishments so different. Dissenting Convocation benchler, Thomas J. P. Carey, noted: "In concluding that the Solicitor [Harry Kopyto] must be disbarred the [Ian Outerbridge-led] Discipline Committee made numerous derogatory comments about the Solicitor calling him 'histrionic, bombastic', 'patently dishonest'. The Committee suggested that the Solicitor wanted 'to tear down and smash' the legal process. He was accused of 'repudiating himself with less difficulty and discomfort than is involved in changing his coat.' In my opinion these remarks ... illustrate a level of antagonism toward the Solicitor that was inconsistent with an objective detachment and could only give rise to a reasonable apprehension of bias on the part of the Committee towards the Solicitor." [Emphasis added.]

In an article appearing in the Fall 1989 issue of the Law Union NEWS, put out by left-leaning lawyers and legal workers, Eric del Junco points out, "In a system as repressive and exploitative as ours, where the rules are so slanted in favor of the ruling elite, 'honesty' in its narrow sense of rule compliance is surely a relatively insignificant virtue."

Carey gives a careful refutation of the fraud charges against Harry Kopyto. He begins by pointing out that in the final version of the Agreed Statement of Facts (representing an agreement between Counsel for the Law Society and Harry Kopyto), both sides agreed to remove the suggestion that Harry "deliberately submitted inflated accounts". The word "deliberately"



Harry Kopyto's fight is far from over.

was removed, and "inflated" was changed to "inaccurate". Carey argues that the Statement of Facts merely indicate that Harry estimated his accounts and that there was no proof that he had acted to defraud the Legal Aid plan. He wrote,

"I find that although estimating, the solicitor clearly believed in the essential truth of his accounts and therefore the facts do not fit into the definition of fraud. . . There was not one piece of evidence called by the Society's Counsel to repudiate the Solicitor or to suggest that he acted dishonestly for a dishonest purpose."

Summing up, Carey concludes the following. There was no evidence that Harry intentionally prepared false accounts. The evidence pointed to his good character and honesty. Harry's evidence was credible and had a reasonable probability of being true. No criminal charges have been laid against Harry, which is normal in cases of fraud. The ambiguity of the facts must be resolved in favor of the accused.

Why, if the dissenting report is so clear does Harry find himself in this predicament? Eric del Junco states: "I think an objective assessment of Harry's career will show that he has assisted our struggle by challenging judicial authority and legitimacy in a way that almost no other lawyer in this province has done, i.e. openly, flagrantly and even insolently. His 'Krazy Glue' remark is a perfect example. [This refers to Harry's denunciation of the courts as being warped in favor of the police, especially in its dealings with RCMP wrongdoings.] It was the sheer insolence of the remark that so enraged judges hearing the case, that made it so difficult for them to finally swallow the bitter pill and let him off. . . The reaction of the courts speaks volumes in relation to the question of the effectiveness of this method of criticizing the 'system,' i.e. it works and they don't like it." He concludes that the system is out to make an example of Harry to chill dissent among other lawyers.

Since Harry's disbarment, he has been forced to vacate his office as a result of pressure being applied by members of the legal establishment on Harry's landlord. He has been unable to secure bank loans. He has received no payment for Legal Aid billings for the last year and a half. And his request that the Law Society provide a statement of the cost they incurred in obtaining a forensic audit of his books (which he believes to be close to a million dollars), has been met with blunt refusal.

Harry's fight with the Law Society is far from over. This fall, an appeal will be heard of his disbarment by the Divisional Court of the Supreme Court of Ontario. There are strong and compelling reasons to have Harry back in the legal profession. In fact, a number of law students and teachers, as well as lawyers, are organizing a campaign to have Harry reinstated. Any contributions to help defray legal costs and statements of support can be sent to the Harry Kopyto Defence Committee, c/o Codina and Pukitis, 390 Bay Street, Suite 1708, Toronto, M5T 2Y2.

THE TROUBLE



WITH

HARRY

IN THE FIRING LINE: Maverick ex-lawyer Harry Kopyto, who has waged a lifetime war against the legal establishment — and paid the price.

JERRY GLADMAN



You're Harry Kopyto and you're a pain in the butt.

But then people have said that for a long time now. It's one of many labels you earned with your wild and woolly shenanigans for most of your 15 years as an anti-establishment socialist lawyer. Before they pulled your ticket and sent you into another arena.

Renegade, maverick, radical, rebel, outrageous. A thorn in the side of the legal establishment. Those were your badges. You often used them to describe yourself. Harry Kopyto, champion of the downtrodden, the dispossessed, the untouchable. The lawyer of last resort.

But there were other labels, ones that made

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But there were other labels, ones that made

you squirm and sputter and kick back. Names like cheater, windbag, grandstander, incompetent, obnoxious clown. A loud-mouthed, self-centred publicity hunter. A hardnose who even went to the wall with his father and brother on political issues, for heaven's sake.

You tried to make a name for yourself with the cases and causes you backed. And there were many issues of social significance, most of them involving the little guy against the system.

You're Harry Kopyto and you wanted to be known for your impact on the law, the precedent-setting cases bearing your mark and your life-long struggle against injustice.

Instead, you made your reputation with Krazy Glue, the Chanukah Caper and the gig that eventually got you tossed — allegedly ripping off Legal Aid. The only battle most people remember you for was the one against the legal profession. And you lost. Old scores settled.

You're Harry Kopyto and they booted you out. Some of the boys in the downtown circle say Harry

Look, my style has



BAR MITZVAH BOY: Kopyto the budding socialist. Inset, Harry as a toddler, and right, his school report card.

Continued from previous page

Harry Kopyto's problems really began back in 1985

Kopyto's disbarment served a dual purpose: It got rid of the little bastard and also used him as an example to chill dissent among other lawyers.

Even many who backed your initial cause believe your incessant outrageous antics gave the legal profession a bad name. But then you figured the establishment earned that without the help of Harry Kopyto.

Others have positive things to say. Folks with a similar political bent. Idealistic law students. Many of your past clients. Other ranking soldiers in the human rights brigade who fight the same wars as you do (albeit with somewhat less annoying theatrics).

You're Harry Kopyto and you sure know how to get attention.

But then that's what they insist it's always been about. Getting people to notice little Harry Kopyto. And it worked. They know you out there. Only it hasn't exactly served you as well as you'd hoped.

You're Harry Kopyto and not too many people are wild about you.

Continued on next page

Continued from previous page

Harry Kopyto's problems really began back in 1985 when the feisty little lawyer should have kept his mouth shut — but couldn't.

Of course, those who've seen Kopyto's act might rule that statement rhetorical. Kopyto could never button it. Not as a kid preaching socialism, as an anti-Zionist quarrelling with his family nor a lawyer tilting at every single windmill hoisted by the legal establishment.

But this time his words — charging a cozy relationship between the courts and the police — really busted some chops.

"It stinks to high hell," said Kopyto back then, frustrated over losing an eight-year legal battle against the RCMP for employing "dirty tricks" against one of his clients.

"The courts are warped in favor of protecting the police. The courts and the RCMP are sticking so close together that you'd think they were put together with Krazy Glue."

While his remarks would eventually give that particular adhesive product more exposure than a thousand marketing ads, the enemy camp thought he went too far. So they took off after him.

"Look, my style has never been designed to win friends in the establishment," says Kopyto. "I'm a radical, a rebel. I'm trouble. But a lot of people agreed with what I said about the courts at that time. With the benefit of hindsight, I might have chosen more judicious metaphors."

"But," he adds, eyes wide, "I was still exercising a fundamental democratic right to freedom of expression."

He was convicted of contempt of court and banned from appearing in Ontario courtrooms. It was a slap on the wrist which could have smothered less had he buckled under. All they wanted was an apology.

"I said at the time I'd rather go to jail than apologize. I would have dug ditches first before giving in to them." For a spell, it appeared he might have had to find

to win friends in the

never been designed

From the early days, he admits there was a rift with his brother over Zionism that has lasted all their lives. "To this day, neither one of us has entered the other's house," Kopyto says sadly. "I hope some day before it's too late we can have a reconciliation."

As a young child, he used to lay awake in the dark of night and wonder why God spared him. It became an obsession. Why was he alive and all his relatives dead? "That's when I made a promise to myself, the only promise I've ever really kept. I'd live my life to atone for the death of my family. I'd fight against fascism to assure it would never happen again."

Only to Kopyto, fascism was the same as capitalism — without the fig leaf. That meant he'd have to fight capitalism.

"I had to fight for socialism. From that point on, the only purpose in my life was to make the revolution."

Socially, he was outside the mainstream, never a joiner. But he wasn't a total misfit. Outside the synagogue where he attended Hebrew classes, there was a snow hill. Early on, Kopyto made it to the top of that hill and, as small as he was, defended it against all comers.

"I always say that I learned how to fight the legal establishment atop a snow hill at the corner of Winona and St. Clair," says the five-foot-five, 170-pound battler.

In university, he was politically active, forever searching for answers, battling the system, fighting for human rights. Outspoken, stubborn, an avowed Marxist. And then he stumbled.

Writing his bar exams, Kopyto got caught copying down somebody else's. He was smart. He'd passed. But the law, down the road, was somebody's life. He'd else to remind him

For a long time, I was a lawyer.

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He won that one come without a p non-conformists. L he apologized. But upstart a little clo

Kopyto really did somewhere deep began appearing him thinking about bringing attention to

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They certainly matter. So they p scandalizing the trial — often bore outlandish behavi

And even thoug conviction was qu rejoicing. He had charges, the most

himself a shovel. But eventually, he had his day. The conviction was overturned by the Ontario Court of Appeal ruling that the law under which he was charged was unconstitutional — which he'd claimed all along.

Kopyto saw the appeal victory as vindication, but his butt was quickly on the line with the Law Society. Five days after the court ruling, he had to answer to six charges of unbecoming behavior.

Harry Kopyto was fearless in the face of the enemy. But his days as a practising lawyer were also numbered.

Whenever someone brings up his past, Kopyto is fond of remarking that he was born with the taste of ashes in his mouth. In some ways, he was.

Born on Friday Dec. 13, 1946, in a displaced persons camp in Ulm, Germany in the wake of the Holocaust, Kopyto's eyes smoulder when he recalls that more than 100 of his relatives were murdered by the Nazis.

"I can never get away from the fact that there were just my parents, my brother and I left in the world from a huge family. Four Kopytos in the whole goddamned world. A whole family cut to a stump. That's a pretty serious way for a kid to begin his life."

The Kopytos came to Canada in 1952. They settled in the Spadina-College area where Harry's mother, Freida, went to work in a factory and his father, Israel, plied his trade as a tailor.

Kopyto recalls becoming political at a very young age.

As a young boy, he was impressed by other radicals, so much so this socialist-in-waiting gave his first political speech at age 10. It was a pacifist speech in Yiddish to a branch of the United Jewish People's Order, a left-wing cultural group. And it felt good.

But his parents were concerned about the direction their young son was taking, mainly because the sharp edge of his politics was his anti-Zionism. He believed strongly that Israel should be a nation for all people — not just Jews.

It reached the point where Kopyto was refused spending money and forbidden to leave the house. But it didn't matter — he went anyway. "I walked downtown and joined the Trotskyist Youth Movement. I was 12 years old and I've been a member ever since."

(SEE P.4)



REBEL WITH A CAUSE: Kopyto holds forth in his early days of campaigning. "I'm a radical ... I'm trouble," he says.

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But Angie has her own troubles. They're after her for alleged immigration improprieties. And being aligned with you has never been a major advantage for her career. It's also never stopped her.

But in your heart, you'll never feel whole again until you're in court, barrelling full steam ahead, challenging judicial authority, defending the little guy.

In quiet moments, you admit you've made mistakes. Harry Kopyto is not perfect. He has blemishes and deficiencies. But no regrets. You still believe there's a place for you on the right side of the courtroom.

You're Harry Kopyto, still King of the Snow Hill. But the snow is melting, Harry, the snow is melting.



FAMILY MAN: Kopyto with his children Marc and Erika, and Angie, his legal associate and live-in girlfriend.

establishment

From the early days, he admits there was a rift with his brother over Zionism that has lasted all their lives. "To this day, neither one of us has entered the other's house," Kopyto says sadly. "I hope some day before it's too late we can have a reconciliation."

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Writing his bar exams, Kopyto got caught copying down somebody else's answers. He didn't have to cheat. He was smart. He'd studied.

Kopyto admitted his crime, took the year over and passed. But the damage had been done. For somewhere down the road, whenever Harry Kopyto was busy making somebody's life miserable, there'd always be somebody else to remind him of the day he cheated.

...

For a long time, Harry Kopyto was just another lawyer.

His early career was somewhat less than remarkable. He defended countless clients, but didn't make any real noise until 1980 when he created the Chanukah Caper. That's when Kopyto first began to attract outside attention.

He had a case put over because he wanted to celebrate the Jewish holiday with his family. But the next day he was spotted by the crown attorney in a courtroom monitoring another case.

In his own defence, Kopyto tried to make it an issue of religious freedom. But they didn't buy it. He was fined \$1 on each of two counts of contempt. The appeals courts eventually quashed the convictions, but emphasized it didn't condone his conduct.

He won that one, but it left a bad taste. Nor did it come without a pricetag — one generally reserved for non-conformists. The Law Society reprimanded him and he apologized. But they began watching this mouthy upstart a little closer.

Kopyto really didn't need the aggravation, but somewhere deep down it kindled a spark. His name began appearing regularly in the papers, which started him thinking about using the media more effectively to bring attention to his cases.

"I know what people say about me being in love with publicity, but it's more than just a matter of getting attention. There have been more than 1,000 articles containing my name between 1980 and 1990. But it's not attention to Harry Kopyto. Harry Kopyto doesn't matter. He's insignificant. It's the issues. What I do is focus attention on the issues and express it in a dramatic and easily understandable form."

They certainly understood him in the Krazy Glue matter. So they prosecuted him on a charge of scandalizing the court with his comments. After a lengthy trial — often bordering on burlesque because of his outlandish behavior — he was found guilty.

And even though he was ultimately cleared when the conviction was quashed, there was scant time for rejoicing. He had to face the discipline committee and six charges, the most damaging being that he overbilled

Legal Aid for an enormous amount.

The Law Society found him guilty of civil fraud. Kopyto claimed it was a difference in interpretation. He admitted the overbilling, but insisted it was due to inaccuracies caused by work overload.

They didn't go for it. Rejecting his explanations as unbelievable, the committee ruled in favor of disbarment.

Ironically, while awaiting his appeal, he sued Legal Aid and they eventually reimbursed him for almost 95% of his claims. "I got almost everything I asked for so how could I have committed fraud? I asked to be charged criminally. I begged to be charged. But they didn't because they knew I never gained one cent as a result of fraud."

Kopyto takes a breath and wags his finger. "The truth is somewhere in there they were getting even with Harry Kopyto for what they saw as past transgressions. They got rid of this pain-in-the-ass thorn in their side."

Whatever the case may have been, little Harry Kopyto was on the outside looking in.

...

You're Harry Kopyto and you want to play with the big boys again.

Your appeal comes up in October. In it, you're challenging the constitutionality of the Law Society's discipline process. Your lawyers figure you've got a decent whack at getting the decision overturned.

But there are a lot of folks out there who'd be delighted if Harry Kopyto never got his ticket restored. Sure, you can still stir up a lot of noise as a legal agent. But it isn't the same as being a full-blown lawyer with all its privileges. And you still wouldn't be able to walk into a big-time courtroom.

If the appeal goes bad, you'll then apply to be re-admitted. If that washes out, you still have plenty to keep you hustling as a legal agent. Appearing before labor relations boards, various professional tribunals, discipline bodies and inquests.

Oh yeah, you can still make a buck, Harry. Pay the rent, jiggle some chump change. It won't be enough to save your fancy Forest Hill digs, but then you've known that for a while. There's always a price.

Then there's politics. A long-time member of the NDP's Left Caucus, you talk of running for office. You're also writing a book about your important cases.

And you have your family, your children. You adore them — Marc, 15, politically uninterested; Erika, 12, a fighter in her father's mould.

You also have Angie. Professional associate, member of your legal team, your live-in lady. She's supported you all

the way down the line, both spiritually and financially. In fact, you admit you'd be a lot worse off if not for Angie.

But Angie has her own troubles. They're after her for alleged immigration improprieties. And being aligned with you has never been a major advantage for her career. It's also never stopped her.

But in your heart, you'll never feel whole again until you're in court, barrelling full steam ahead, challenging judicial authority, defending the little guy.

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But the snow is melting, Harry, the snow is melting.

Disbarred lawyer seeks to argue case before law society

By Tracey Tyler
TORONTO STAR

After four years in legal purgatory, Harry Kopyto wants to appear before the very body that turfed him out of the profession of law.

The disbarred lawyer is seeking permission to represent his girlfriend, immigration lawyer Angie Codina, in disciplinary proceedings before the Law Society of Upper Canada, which ousted him in 1989.

Codina, 36, faces charges of conduct unbecoming a solicitor stemming from her conviction and six-month jail term for immigration fraud.

At a hearing yesterday, law society benchers seemed distinctly unimpressed with Kopyto's conduct, which ranged from being 30 minutes late to consistently veering off on tangents.

However, they agreed to put off their decision until after Oct. 12, when an appeal of his disbarment is scheduled to be heard by Ontario's Divisional Court.

Kopyto, 46, says the issue is whether Codina has the right to choose her own legal representation.

But law society counsel Gavin MacKenzie argued yesterday that the main issue is Kopyto's competence and suggested that allowing the disbarred lawyer to act for Codina would make a "mockery" of the profession's disciplinary process.

A lawyer's competence is measured not only by technical ability to prepare legal arguments but by their integrity,



LEGAL TEAM: Harry Kopyto is asking to represent girlfriend Angie Codina.

which is sorely lacking in Kopyto's case, MacKenzie said.

While Kopyto agreed that integrity was important, he refused to acknowledge that past assessments of his character would have any bearing on that.

The simple fact of disbarment, he added impatiently, shouldn't render a lawyer a bad person forever.

Kopyto told the committee that he, like other disbarred lawyers, routinely represents people in provincial court on less serious matters. He also acts in all manner of administrative tribunals and has represented Codina at law society hearings in the past, he said.

The law society has since brought a motion to bar him from her case.

Two of yesterday's panel members voted to disbar Kopyto in November, 1989, after he was found guilty of billing the Ontario Legal Aid Plan for unperformed services.

He has consistently maintained that the law society is persecuting him.

U.S. Russia to hold joint exercise

United States and Russia

Client's rights violated, disbarred lawyer says

Kopyto suing judge after being ordered

By Daryl-Lynn Carlson
Law Times

Disbarred lawyer Harry Kopyto is making moves to sue a provincial court judge who he says wrongly ordered him off a case and violated the rights of his client.

Kopyto said he should have been allowed to represent his client — charged with mischief over \$1,000 — because the Crown had agreed to proceed summarily.

But when Kopyto sent his client to court with a note asking for an adjournment, Ontario Court, Provincial Division Judge C.H. Paris told the accused that Kopyto could not handle the case.

"Mr. Kopyto cannot act on your behalf," Paris told the client, who was making a first appearance at Toronto's Old City Hall courthouse, according to a transcript of the proceedings.

Paris reiterated his instruction to the client after Crown lawyer Michael Tulloch told the court he planned to proceed summarily on the charge.



Harry Kopyto

Non-lawyer agents are permitted to represent people accused of criminal offences — as long as they are prosecuted summarily, said David Nancoff of the Ontario Paralegals Association.

But judges have the discretion of accepting or rejecting individual agents if it's believed the representative is not able to adequately rep-

resent an accused, Nancoff said.

"I have a feeling this may even have more to do with the personality," Nancoff speculated, "because it's Harry and he's such a controversial person."

He added that the association "is not keen on paralegals doing criminal offences" and the paralegal practice does not want to become "a haven for disbarred lawyers."

Kopyto, who's made headlines for his unconventional criticism of the justice system, said he believes Paris' instruction is indicative of a profession-wide initiative to turf him right out of the system since he was disbarred in 1989 for submitting inaccurate bills to the Ontario Legal Aid Plan.

"This was a violation of my rights and my client's rights," Kopyto said in an interview. "I walk in the courts and I feel trepidation. Don't I have the same rights as anybody else does? A person off the street can walk in and appear as a legal agent. Everybody, it seems, except Harry Kopyto."

Kopyto maintained he had done nothing wrong on the case and would have relinquished it had the Crown decided to proceed by way of indictment.

"I should have been allowed to represent [the client]," Kopyto said. "If I did something wrong in the course of a trial, that's another matter. You can always exclude somebody for his conduct in court."

According to Kopyto, his client was rattled by Paris' instructions and decided on the spot to plead guilty. "He was flabbergasted, overwhelmed and distraught," Kopyto said. "He was without legal advice."

Kopyto said he anticipated the charge against his client would have been withdrawn had he been allowed to show evidence that the man had paid restitution following the incident that led to the charge.

The client ultimately went to a neighbouring courtroom and pleaded guilty.

In a statement of claim filed in

February 28 - March 6, 1994

off of case

Small Claims Court earlier this month, Kopyto alleges that his client was wrongly denied the counsel of his choice and his right to a fair hearing under the Charter of Rights.

Besides Paris, the statement also names Tulloch and duty counsel Jennifer Griffiths as defendants after they reiterated in court to Kopyto's client the judge's instructions to retain a lawyer.

Kopyto goes further, alleging that the defendants made him appear "incompetent" and made the remarks "maliciously . . . with the knowledge that he was in fact competent, . . . for the purpose of causing the plaintiff financial harm."

He's claiming \$250 in lost fees and \$5,750 in punitive and exemplary damages against each of the defendants.

Kopyto has also filed a complaint against Paris with the Ontario Judicial Council. OJC secretary Boris Krivy wrote Kopyto that the matter will be brought to the attention of council members at their next meeting.

5th Nov 18, 95

Fired nurse gets \$250,000 goodbye from hospital

BY DESMOND BILL
STAFF REPORTER

The Toronto Hospital is going to pay \$250,000 to a nurse and her legal agent says it is to compensate her for her racially motivated dismissal.

But a hospital official said: "She was an incompetent nurse who was looking after babies and we paid her off to guarantee she did not come back.

"It cost \$250,000 of your money and my money but it was the only way to make sure she would not come back to Toronto Hospital," David Allen told a Star reporter yesterday.

He insisted the settlement "had nothing to do with discrimination" and said one of the reasons for settling it was that the case had already cost the hospital \$180,000 in legal fees.

Jamaican-born Claudine Charley worked at the hospital as a registered nurse from June, 1989, until she was fired in August, 1992. The Ontario Nurses' Association protested her dismissal and took the case to arbitration.

Charley engaged Harry Kopyto, a disbarred lawyer, to act as her legal agent at the arbitration hearings. She was also represented by the association lawyer.

Early last month, after 37 days of hearings, both sides agreed to go before a mediator to try and settle the case.

An agreement was finally reached at 3 a.m. on Oct. 20 after a 10-hour negotiating session at the Sheraton Centre Hotel.

The settlement was announced yesterday by Kopyto, who called it "the largest award for systemic discrimination in the history of Canada."

Kopyto said another 70 days of arbitration hearings had been scheduled and conceded the legal expenses were likely a factor in persuading the hospital to settle.

But he said a more important reason was that the hospital wanted to avoid "major embarrassment at some of the things coming out."

He claimed Charley "was a victim of systemic discrimination. She was overscrutinized, overmonitored and when she made mistakes there was overreaction. They made a big deal of the smallest thing.

"She also was denied an opportunity to remove herself from people with whom she was in conflict; she was trapped in a situation of continuous

tension and anxiety."

Kopyto said the hospital tried to show Charley was incompetent by citing mistakes she made in keeping charts and in failing to give the proper quantities of medicine.

"Someone went through everything she had done for three years and came up with every single thing to justify her dismissal, like being five minutes late for work," he said in a telephone interview.

Kopyto said Charley found a new job soon after being fired. She now works at a hospital in North York but was forced into bankruptcy and lost her house.

He said the payment to Charley amounts to a "punitive award" since she had "relatively little monetary loss" as a result of being fired.

He also claimed that as part of the "award," she had been given a "helpful reference" by the hospital.

Allen pointed out, however, that the money is not an award but a settlement and the letter of reference simply states she worked at the hospital and gives the dates of her employment.

Allen said Charley was fired because "she was an incompetent nurse who was looking after babies. We were worried about the welfare of the newborns."

He said the hospital had spent \$180,000 in legal fees for 37 days of hearings and Kopyto had booked an additional 70 days, which would have run up huge additional expenses.

"We had no assurance that this woman would be gone from our institution at the end of this arbitration," he said in a phone interview. "The arbitrator could have said, 'Take her back.'"

"We decided the only way to guarantee she would not come back to Toronto Hospital was to offer her a settlement she would accept.

"It was the price we had to pay. We paid her off to guarantee she did not come back."

He said it was "outrageous" for Kopyto to claim Charley was the victim of racial discrimination.

"She was fired for not providing safe care to infants," he said.

Charley could not be reached for comment. A friend of hers told The Star she was angry at Kopyto for having issued a public statement on the settlement.



HARRY KOPYTO: Alleges that client was victim of systemic discrimination.

Labor board to decide on

Case cites poor training, slurs

BY DONNA JEAN MACKINNON
STAFF REPORTER

The Ontario Labor Relations Board has been asked to decide if racial harassment constitutes a workplace hazard under Ontario's Occupational Health and Safety Act.

The application, brought before the labor relations panel yesterday by Selwyn Pieters, 29,

a fired Toronto Board of Education employee, is supported by CUPE Local 231.

Pieters alleges that during his three months as a custodian he was given faulty equipment, was improperly trained and his supervisors made negative racial comments about black people. He also claims his dismissal from the job was unjustified.

"I was a basket case. I was racially harassed by more than one supervisor and they didn't supply me with training or equipment. I'm an academic. I

never did manual labor," Pieters said outside the hearing room.

Pieters explained that he was required to use brass-cutting equipment without training and had to work with hazardous materials with defective equipment, resulting in a serious case of skin irritation on his hands.

Pieters, who worked for three months as a custodian, later won a job as a street worker, counselling kids at the West End Alternative School.

But he had to leave the job after two months due to depres-

racial harassment case

sion, on Nov. 14, and was subsequently fired on Dec. 10.

Harry Kopyto, who represents Pieters, said he plans to argue that failure to provide proper training to minorities is "systemic discrimination" that results in stress and depression.

Kopyto also told the three-member labor panel that his client did not want these issues to be decided before the Human Rights Commission as it "prosecutes less than 3 per cent of the cases before it.

"I plan to establish this is a

health violation under the health and safety act," Kopyto said.

Toronto Board of Education lawyer, Stephen Raymond maintained that Pieters' grievances were matters for binding arbitration or the commission, but later accepted Pieters' choice of a labor board hearing as "his forum."

CUPE lawyer Judith McCormack commented that the union supports Pieters' applications and his contention that racism is a "workplace hazard."

August 15, 1997 (Star)

August

Ban against disbarred lawyer quashed

BY WENDY DARROCH
STAFF REPORTER

The order banning a disbarred lawyer from ever representing or advising a person appearing before any provincial court in Ontario has been quashed.

Mr. Justice John Ground of the Divisional Court ruled that a justice of the peace did not administer due justice when he barred Harry Kopyto "from representing or advising any person appearing before any provincial court in Ontario forever, or, at least for an indefinite period of time."

The order was made July 12, 1996, after Kopyto appeared as an agent for a defendant in a minor case before the justice of the peace.

Ground noted that Kopyto was given no notice that the order was going to be made and no opportunity to make submissions to the court.

UNNECESSARY ORDER

"I do not accept that the order made by the justice of the peace . . . was an exercise in jurisdiction . . . it seems clear to me that such order is unnecessary," Ground wrote in a two-page judgment released Wednesday.

Kopyto has been acting as a legal representative before administrative tribunals and small matters in provincial court since being disbarred from practising law in 1989.

The 50-year-old was accused of cheating the Ontario Legal Aid plan out of thousands of dollars by billing more than 2,000 hours of work not performed to 463 accounts over three years.

He admitted to inaccurate billing.

Friends:

Harry's struggle continues, to reform the legal system and regain his right to exercise his profession as lawyer, which he continues to practise as legal agent in an exemplary manner.

Be sure to pick up today's Globe to check out this story, by the reporter that covered the Krazy Glue case 21 years ago, but who doesn't yet have his facts straight about that period.

==JD

To: FG

From: John Darling <fwdsail@idirect.com>

Subject: Comrade Kopyto battling "Krazy Glue" judge -- Globe & Mail Oct. 6/06

Cc: Friends

Comrades & Friends:

"Judge to face misconduct probe" (Toronto Globe & Mail, Oct. 6/06) reports Harry Kopyto's action against Judge Zuker, who back in 1985 convicted Harry of contempt of court after the judge refused to convict the RCMP, which he admitted had broken the law, of harassment crimes his client Ross Dowson and the movement he led. (Harry had denounced this action by noting that the courts and RCMP "are stuck together with Krazy Glue.")

Judge Zuker is now being investigated by the Ontario Judicial Council for misconduct after Harry accused him of deleting remarks on Harry's courtroom "overly adversarial" style, from a court transcript being used for an appeal by Harry's client.

The article notes that since 1985 Zuker has become a well-known specialist in family law while Harry has suffered disbarment at the hands of the Ontario Law Society, who found him guilty of misconduct by a split rare decision, ignoring Harry's demands for a trial where he could defend himself against charges of legal aid fraud. Harry's disbarment was never based on any court decision, only by an arbitrary and political ukase of the Law Society. The article misrepresents the facts when it insinuates that Harry was disbarred for fraud, while in fact no court decision was ever rendered. Talk about a "frameup," a political railroading!

The article quotes Harry: "This judge thinks he can get away with anything he wants to... He did it with Dowson in the 1980s, and he is doing it to my client now... In a sense, he was the author of my misfortune then. Now, I may be the author of his misfortune."

Well-wishers can reach Harry at 416-907-5128 and he can be heard weekly on a highly

Judge to face misconduct probe

Hearing ordered over complaint key remark deleted from transcript

BY KIRK MAKIN, JUSTICE REPORTER

An Ontario judge will be probed for misconduct by his peers in the wake of allegations that he deleted a key remark from a court transcript.

The Ontario Judicial Council ordered a rare misconduct hearing after it completed a preliminary investigation into a complaint lodged against Mr. Justice Marvin Zuker of the Ontario Court of Justice.

The complainant is disbarred Toronto lawyer Harry Kopyto, who was prevented from acting as a legal agent in Judge Zuker's court last year on the basis that Mr. Kopyto has a reputation for being overly adversarial.

After being excluded from the July 29, 2005, proceeding, Mr. Kopyto ordered a transcript so that his client, Robin Mayer, could appeal the ruling.

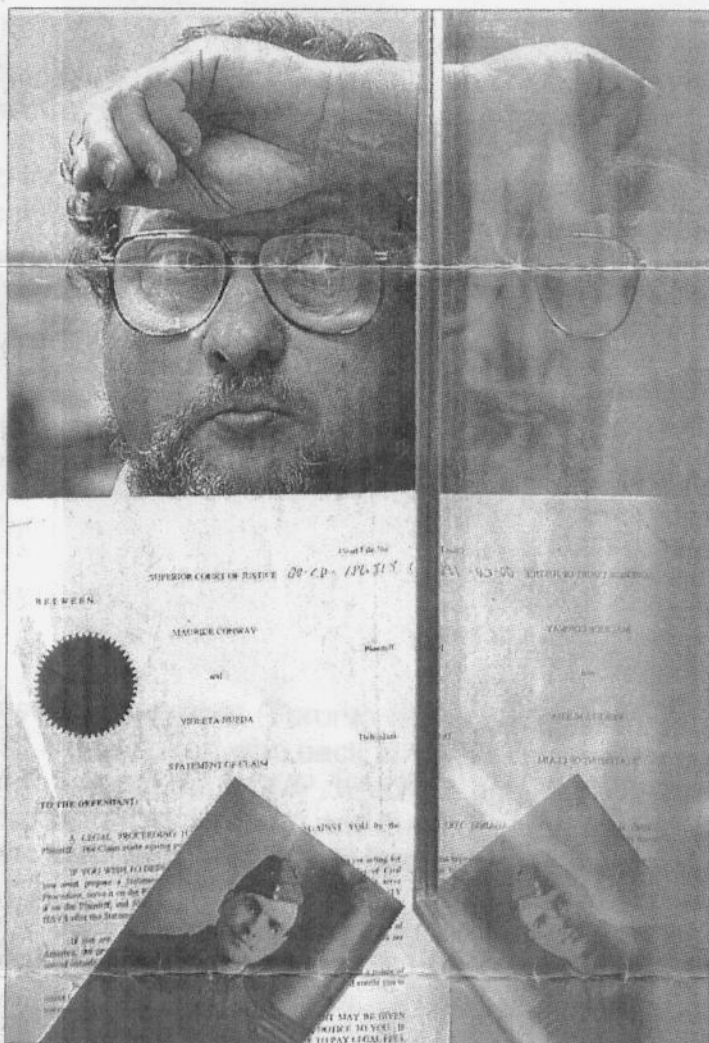
He alleges that the crucial phrases underlying Judge Zuker's ruling were mysteriously missing.

"I had to pinch myself," Mr. Kopyto said in an interview. "Did I dream it? That was my grounds of appeal. How can she [Ms. Mayer] proceed with an appeal if the grounds aren't there?"

Mr. Kopyto said the case has important repercussions for the justice system. "He [Judge Zuker] is highly regarded among the judiciary," he said. "If he feels comfortable editing a transcript for content, what are the other judges getting away with? If Judge Zuker is doing it, then it's widespread."

In one of several highly unusual twists, the case brings together two old adversaries whose initial courtroom clash in 1985 resulted in a milestone judgment on freedom of speech.

In that case, Mr. Kopyto, who was already well known within the legal community for his left-leaning causes and his combative style, was suing the RCMP for alleged political dirty tricks on behalf of a cli-



PATTI GOWER/THE GLOBE AND MAIL

Harry Kopyto alleges that editing of a legal transcript deprived his client of a way to appeal a ruling in a family-law case.

ent, Ross Dowson.

After accusing Judge Zuker in *The Globe and Mail* of perpetrating a mockery of justice and favouring police "as if they're stuck together with Krazy Glue," Mr. Kopyto was charged and convicted of contempt of court. However, the Ontario Court of Appeal later acquitted him, striking down the contempt provision he had been charged under, known as "scandalizing the court."

In subsequent years, Judge Zuker, a highly regarded specialist in family law, rose from being a small claims court judge to a mainstay of

the family court branch. Mr. Kopyto, meanwhile, was disbarred for cheating legal aid.

Mr. Kopyto's current complaint arises from a case in which Ms. Mayer was battling the Jewish Family and Child Service, which was investigating her treatment of her children.

According to the transcript, Judge Zuker questioned Mr. Kopyto's understanding of family law and stated several times that the welfare of Ms. Mayer's children was at stake.

"The best interests of the children come first; not who's right or

who's wrong," Judge Zuker told Ms. Mayer. "At the end of the day, I may make an order that you don't agree with, and then you'll say: 'Well, I should have had a lawyer represent me.' What is more important in our society than the future of our children?"

Mr. Kopyto's complaint to the judicial council alleges that by removing the reference to his overzealous tactics from the court transcript, Judge Zuker effectively deprived Ms. Mayer of her ability to appeal the ruling.

"I believe that such conduct amounts to clearly improper conduct and, in the instant case, resulted in a miscarriage of justice to my client in the appeal process," he said.

Ms. Mayer states in a document prepared for the appeal that she was "dismayed and appalled" when she discovered that the transcript had been altered.

She said that "my life and family are being subjected to a judicial process before a judge whose apparent conduct has raised serious issues about the administration of justice."

Mr. Kopyto said yesterday it is absurd for a judge to accuse a lawyer of being too adversarial. "That's a bunch of crap: Everything in court is adversarial," he said.

"Lawyers are terrified to lay complaints against a judge," Mr. Kopyto added. "The perceived wisdom is that you're cutting your throat, so you just don't do it. For every complaint that is laid, there are probably a few dozen that should have been."

Mr. Kopyto said that he had to fight hard in order to obtain a copy of the guidelines judges are given which set out the rules for editing transcripts; rules which specifically restrict changes to matters of accuracy and punctuation, and say that nothing of substance can be removed.

"This judge thinks he can get away with anything he wants to," Mr. Kopyto said. "He did it with Dowson in the 1980s, and he is doing it to my client now. ... In a sense, he was the author of my misfortune then. Now, I may be the author of his misfortune."

Philip Epstein, the judge's lawyer, said he couldn't comment on the matter.